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Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 76-175)

United States Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., June 21, 1976.

The following are decisions recently promulgated by the United States Customs Service through its Office of Regulations and Rulings.

(CLA-2-R:CV)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 76-175(1))

Classification of steel pipe or tubing not of uniform wall thickness throughout its length

The Customs Service has been asked to rule on the tariff status of certain steel pipe or tubing. The question presented is whether the merchandise is excluded from classification under the provision for steel pipe "with walls not thinner than 0.065 inch" in item 610.32, Tariff Schedules of the United States (TSUS), when some, but not all, of the measurements taken along its length fall below 0.065 inch.

It has been reported that shipments of pipe whose descriptions place their wall thickness or or around the statutory minimum are routinely sampled. The number and sizes of samples vary with the circumstances. Longer lengths are sometimes cut into smaller pieces for shipments to the Customs laboratory. Upon arrival at the laboratory, wall thickness readings ae taken at three points (approximately 120° apart) along each end of each sample. That is, there are six readings

per piece of pipe. Copies of representative laboratory reports were submitted as follows:

Place No.	*Marks*	*Wall Thickness In Inches Each End*	
1	AWH–4737–King	0. 0663	0. 0660
		0. 0658	0. 0655
		0. 0656	0. 0668
2	AWH–4737–Love	0. 0660	0. 0659
		0. 0659	0. 0665
		0. 0659	0. 0652
3	AWH–4737–Mike	0. 0646	0. 0650
		0. 0665	0. 0661
		0. 0665	0. 0652
4	AWH–4737–Nan	0. 0661	0. 0650
		0. 0660	0. 0658
		0. 0648	0. 0661
5	AWH–4737–Oboe	0. 0659	0. 0649
		0. 0665	0. 0660
		0. 0645	0. 0660
6	Mike	0. 0651	0. 0650
		0. 0648	0. 0650
		0. 0659	0. 0652
7	Megat	0. 0667	0. 0631
		0. 0660	0. 0666
		0. 0635	0. 0636
8	Oboe	0. 0651	0. 0661
		0. 0666	0. 0662
		0. 0653	0. 0638
9	Peter	0. 0668	0. 0651
		0. 0642	0. 0640
		0. 0663	0. 0669
10	Queen	0. 0640	0. 0668
		0. 0669	0. 0638
		0. 0645	0. 0635
11	Roger	0. 0630	0. 0632
		0. 0658	0. 0664
		0. 0669	0. 0674

It is apparent that pieces 1 and 2 are not excluded from classification under 610.32, TSUS, since none of the measurements therein is less than 0.065 inch. Pieces 3 through 11 would be excluded from classification under item 610.32, TSUS, if the phrase "with walls not thinner than 0.065 inch" is interpreted to apply to any measurement at any point along the length of the pipe. If an average of

readings for each piece were taken, then only pieces 7 and 10 would be excluded from classification under item 610.32, TSUS. The issue thus becomes whether or not it is permissible to strike an average of readings to determine whether the pipe has "walls not thinner than 0.065 inch."

The case on averaging most similar to the instant one is *Harold A. Sothern* v. *United States*, 32 Cust. Ct. 216, C.D. 1605 (1954). The issue therein was the bursting strength of certain strawboard as determined by the statutorily prescribed Mullen test. Just as it is concededly impossible in the present case to produce pipe with uniform wall thickness throughout its length, it was shown to be impossible to manufacture strawboard with uniform bursting strength in that case. The Customs Examiner testified that where there were variations above and below the statutory minimum, the average of readings was taken. The court noted that even if averaging were allowed in that case, the average would have fallen below the statutory mark. The court then added by way of dicta:

> Neither is there evidence in this record to support the examiner's action in striking an average bursting strength where portions of a sample test above or below the statutory requirement. *If such be the practice commercially or as countenanced by long-continued administrative action, we are not so advised. Without some overt expression of authority to sanction this practice*, we do not construe the language as authorizing it. (Emphasis added) *Harold A. Sothern* v. *United States*, supra, at 227.

We are likewise unable in the present case to find "some overt expression of authority to sanction" this method of averaging the measurement to determine the wall thickness of the pipe. Neither commercial practice nor long-continued administrative action countenancing such a method has been shown. In fact, information before us is to the contrary.

In one sense, the authorities did recognize "averaging." They agreed that in the statistical sense these walls are not thinner than 0.065 inch if the "average" of the readings is over 0.065 inch. But since there is no agreed upon method of *measurement*, there can be, a fortiori, no agreed upon method of *averaging*. That is, there can be no commercial or long-continued administrative practice of averaging if the variables of averaging (such as number and location of measurements per sample) are not the subject of standardized procedures.

There is likewise little significance in the fact that the trade practice is to accept "16 BWG" tubing as being 0.065 inch. The legislative history of item 610.32, TSUS, suggests that gauge numbers are irrelevant. In the Tariff Act of 1897 the language of paragraph 152, a forerunner of item 610.32, TSUS, indicated that the walls could be

"not thinner than No. 16 wire gauge." That language remained unchanged in subsequent tariff acts until 1913, when the size requirement was deleted altogether. The Tariff Act of 1922 added the present language, "not thinner than 0.065 inch," to paragraph 328, also a forerunner of item 610.32, TSUS. In our view this history evidences a legislative intent that the commercial designation be disregarded.

Finally, no matter how close the measurements are to the statutory minimum, any deviation therefrom cannot be disregarded. For it is elementary that the rule of "de minimis non curat lex" is inapplicable where, as here, a dividing line between two classes of merchandise has been fixed by Congress with certainty and exactness. *United States* v. *Younglove Grocery Company*, 5 Cust. Ct. Appls. 377, T.D. 34873 (1914); *Humphrey & MacGregor* v. *United States*, 24 Cust. Ct. 415, Abstract 54191 (1950).

Therefore, absent any convincing evidence of commercial or long-standing administrative practice, it is impermissible to strike an average of readings to determine wall thickness of pipe. Where any measurement taken along its length falls below 0.065 inch, the pipe is excluded from classification under item 610.32, TSUS, because its walls fail to be "not thinner than 0.065 inch" as that term is used in the superior heading to that item. (February 17, 1976 042922)

J. P. TEBEAU,
for SALVATORE E. CARAMAGNO,
Director,
Classification and Value Division.

(T.D. 76–175(2))

Men's Sweaters With Leather Decorations

The Customs Service has been asked to rule on the tariff status of men's wool cardigan sweaters with genuine leather sewn on the collar areas. A sample of the merchandise has not been submitted. The issue to be resolved is whether the overlaid leather on the subject merchandise constitutes ornamentation for tariff purposes.

Headnote 3, Schedule 3, TSUS, defines the term "ornamented" for tariff purposes. In order for an article to be classified as ornamented, some form of ornamentation as described in Headnote 3 must be on that article for a primarily decorative purpose. We have previously ruled in Treasury Decision 73–71 that for a nontextile form of decoration to fall within the preview of Headnote 3, that decoration must either be an applique or one of the specifically named

articles in paragraph 3(a)(iv) of Headnote 3 (beads, bugles, spangles, bullions, or ornaments).

Here, we are concerned with whether the leather attachments to the collar of the subject merchandise are appliques. If they are not; then they would not constitute ornamentation for tariff purposes. In this regard, the case of *United States* v. *Hamburger Levine Co.*, T.D. 34382 (1914), held that strips which were not in the form of designs did not constitute appliques. See also *Alfred Kohlberg Paint* v. *United States*, T.D. 49394 (1938). Therefore, if the leather on the collars of the subject merchandise is in the form of straight strips, it will not be applique and will not constitute ornamentation for tariff purposes. However, if the leather is in the form of a figure or design, then it constitutes an applique and will cause the garment on which it is attached to be classifiable as ornamented for tariff purposes.

ORR Ruling 74–171 is cited as support for the position that the garments in question should be classified as ornamented. That ruling concerned strips of textile fabric that had been coated on one surface with nontransparent plastics and embossed to create a leather-like appearance. Since coated or filled fabrics are textile materials, classifiable in Part 4C, Schedule 3, TSUS, when imported in material lengths, the overlaid strips which were the subject of the cited ruling are not comparable to the leather nontextile decorations on the instant merchandise.

Accordingly, the subject merchandise is classifiable as not ornamented if the leather pieces are in the form of strips or as ornamented if the leather pieces are in the form of figures or designs. (May 20, 1975–038114)

JAMES W. O'NEIL,
for SALVATORE E. CARAMAGNO,
Director,
Classification and Value Division.

(T.D. 76–175(3))

Determination of Component Material of Chief Value

The Customs Service has been asked to rule on the tariff classification applicable to a woman's coat made from cotton and man-made fibers. No sample was submitted, however, it appears that the subject garment consists of a woven outer shell of blended cotton and man-made fiber yarns, a man-made fiber lining, and a man-made fiber interlining. The question to be resolved is whether the subject mer-

chandise is in chief value of cotton or man-made fibers for tariff purposes. In this regard, the following information was submitted by the importer.

	Outer Shell	
	Cotton	*Man-Made Fibers*
Cost per pound ready for spinning	HK $2.3462	HK $3.2089
Weight required to yield 1 pound blended yarn	0.78 lb.	0.404 lb.
Cost of materials required to yield 1 pound blended yarn	HK $1.83 (58.5%)	HK $1.30 (41.5%)
	Cost per dozen garments	
Shell	US $32.57	US $23.08
Lining	------	4.80
Thread	1.80	------
Interlining	------	5.76
	$34.37	$33.64

The shells are stated to be 60 percent cotton and 40 percent man-made fibers. Assuming that these figures represent relative weights and that the above information is accurate, it appears the importer's contention that the merchandise is in chief value of cotton is correct.

In determining the component material of chief value in an article composed of two or more separate components, it is essential that the value of these components be compared at an equal stage in the manufacture of that article. To this end, it is a well settled principle of Customs law that the value of each of the component materials must be taken as of the time each one is ready to be united with the other materials in the manufacture of the article, that is, at the time when nothing further remains to be done to it as material. We believe the application of this rule must conform to the holdings in *True Fit Waterproof C. v. United States*, 7 Ct. Cust. Appls. 489, T.D. 37101 (1917), and *N. Erlanger Blumgart Co., Inc. v. United States*, 62 Cust. Ct. 110, C.D. 3691 (1969), affirmed 57 C.C.P.A. 127, C.A.D. 991 (1970).

The *True Fit* case involved essentially the same question as presented here, only that case involved two types of garments, one made from a cotton fabric cemented to a cotton and wool fabric, and the other made from a cotton and silk fabric cemented to a cotton and wool fabric. Given those facts, the court stated:

> The waterproof garments are not composed of silk, wool, and cotton yarns and rubber, but of cloth and rubber, and from that it follows that the value of the silk, wool, or cloth, that is to say, their value as yarns plus their proportion of the cost of weaving and other expenses incurred in making the cloth and bringing it to the condition it had immediately prior to its combination with the other materials in order to form the goods in question. In accordance with the decision rendered by this court in Field & Co. v. United States (T.D. 36876), such cost of weaving and other common expense occasioned by the bringing of the yarns to the status they have in the cloth should in such a case as that here presented be proportioned among the different yarns of the mixed fabrics on the basis of quantity. (at pgs. 336–337)

In *Erlanger Blumgart*, the merchandise involved woven fabrics composed of yarns which contained linen, nylon, and wool fibers. There the court ruled that the cost of spinning the fibers into the yarns must be apportioned among the component fibers in order to ascertain the value of the materials found in the fabric. No consideration was given to apportioning the weaving costs since weaving constituted the final assembly or joining of the components into the completed article—a woven fabric.

Following *True Fit* and *Erlanger Blumgart*, we are of the opinion that in determining the component material of chief value in garments composed of more than one type of fabric, the costs of spinning, weaving, cutting, and other expenses of bringing the fabrics to the condition they had immediately prior to their combination must be apportioned to the various component materials which were the subject of those costs and expenses. Since this data has not been made available to us in this case, we are unable to determine the component of chief value with absolute certainty. However, on the basis of the information supplied, the yarns comprising the outer shell fabric are in chief weight and value of cotton. Therefore, it appears that apportioning the value of spinning, dying, weaving, cutting and other processing to the component fibers of that fabric according to their relative weights will only serve to increase the difference by which the value of the cotton exceeds the value of the man-made fibers.

The contention is made that the cost of the cotton thread used in sewing the garments together should be disregarded in determining the component material of chief value because it is part of the cost of uniting the various materials.

It is true that the costs which enter into the uniting of materials to make finished articles are not considered in the determination of component material of chief value. However, the cotton thread that holds a lining to an outer shell or a sleeve to the body of the garment is as much a part of that garment as the lining, sleeve, or outer shell. This is

particularly true in the case of thread since without it there would not be a completed garment. Therefore, it is not the cost of the thread which is used to join the materials together that is not considered, rather, it is the cost of the actual uniting. In the absence of authority to the contrary, the cost of any substance physically present in a finished garment must be considered in determining the component material of chief value.

Accordingly, in the absence of information indicating that the value information set out above is incorrect, or that after apportioning the costs of weaving, cutting, etc., a different result will ensure, the subject merchandise is classifiable under the provisions for wearing apparel of cotton. Without a sample, we are unable to determine a definite tariff classification applicable to this merchandise.

This ruling is in accord with ORR Ruling 72–413, abstracted as Treasury Decision 72–340(11). However, we note that ORR Ruling 74–113, abstracted as Treasury Decision 74–98(24), held that in determining the component material of chief value of jackets made from a single fabric composed of yarns of blended wool, linen, man-made fibers, the values of the various component materials were to be compared immediately after they had been spun into yarns.

While the two cited rulings are in apparent conflict concerning the stage at which the values of the component materials are compared, they are distinguishable from each other on the basis of the merchandise involved. This present ruling and ORR Ruling 72–413 concern garments made from fabrics of different components. ORR Ruling 74–113 involved garments made wholly of the same fabric. We recognize that under these rulings two standards now exist of determining the component material of chief value in garments, depending on the class of garments involved. While such a situation is not desirable, ORR Ruling 74–113 will continue to be followed and distinguished from this ruling on the basis of the character of the merchandise until such time as a change in prctiace may be effectuated. (June 26, 1975—039453)

JAMES W. O'NEIL
for SALVATORE E. CARAMAGNO,
Director,
Classification and Value Division.

(T.D. 76-176)

Antidumping—Customs Regulations revised

Part 153 of the Customs Regulations, pertaining to antidumping, revised

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 153 — ANTIDUMPING

Notice of a proposed revision to Parts 153 and 175 of the Customs Regulations (19 CFR Parts 153, 175), pertaining to antidumping and petitions by American manufacturers, producers, and wholesalers, was published in the FEDERAL REGISTER on July 23, 1975 (40 FR 30825). An extension of the time given for the filing of comments on the proposed revision to October 22, 1975, was published in the FEDERAL REGISTER on September 19, 1975 (40 FR 43226). As noted in the preamble to the notice of proposed rulemaking, the primary purpose of the proposed revision was to bring Parts 153 and 175 of the Customs Regulations (19 CFR Parts 153, 175) into conformity with the provisions of the Trade Act of 1974, P.L. 93-618, 88 Stat. 1978. Changes or additions in language were also proposed to clarify some provisions and to incorporate existing administrative interpretations and practices into the Customs Regulations. Changes proposed to Part 175 of the Customs Regulations in the notice of proposed rulemaking are still under consideration and will be published at a later date.

After consideration of all data, views or arguments submitted in response to the notice of proposed rulemaking, the following changes were made in the proposed revision:

1. Section 153.7 has been changed to specify that the comparison to be used for determining sales at less than fair value in cases of merchandise imported from state-controlled-economy countries will be based on prices or constructed value of similar merchandise produced in the United States in those cases where sales or offers for sale of similar merchandise in any other non-state-controlled-economy country do not provide an adequate basis for comparison.

2. Paragraph (b) of section 153.10 has been changed to delete the reference to "research and development costs" because such costs do not, in any instance, bear a direct relationship to any sales under consideration. Further, a new sentence has been added to provide that in making comparisons using exporter's sales price, reasonable allowance will be made for actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market. This change is intended to reflect long existing Treasury practice.

3. Paragraph (c) of section 153.10 has been changed to provide that in determining allowances for differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller but, were appropriate, may also consider the effect of such differences upon the market value of the merchandise. Likewise, a comparable change has been made in section 153.11 where similar merchandise is being compared, except that under that section the Secretary will be guided primarily by the differences in cost of manufacture if it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences. These changes are intended to reflect long existing Treasury practice.

4. Paragraph (a) of section 153.27 has been changed to provide that petitions should, rather than shall, contain certain specified information. This change was made in recognition of the fact that certain persons may not be able to provide all the information required by the notice of proposed rulemaking as necessary to form the basis for initiation of an antidumping investigation. However, this change is not intended to alter the requirement that all reasonably available information be submitted by the petitioner.

5. A new paragraph (d) concerning retroactive withholding of appraisement has been added to section 153.35. The new paragraph provides that the Secretary, in such situations as he deems appropriate, may set as the effective date of a "Withholding of Appraisement Notice" a date prior to the date of publication of that notice. Paragraph (d) gives an example when such action would appear to be appropriate. In the example, (1) appraisement is withheld regarding a class or kind of merchandise as to which a dumping finding has been revoked, at least in part on the basis of price assurances, and (2) the Secretary concludes such situation reflects a history or pattern of below fair value sales.

6. Section 153.38 has been revised to reflect a recently announced policy whereby a discontinuance of the investigation may be issued with respect to one or more, but less than all, companies when all or nearly all of the sales by such company or companies have been examined and the possible margins of dumping are considered minimal in relation to the volume of imports involved. In addition, as a condition for such discontinuance, prices must be revised and assurances given of no future sales at less than fair value.

7. A new paragraph (e) of section 153.44 has been inserted to retain the Secretary's authority in unusual circumstances to modify or revoke a finding of dumping without publication of a "Notice of Tentative Determination to Modify or Revoke Dumping Finding". This provision merely reflects existing authority and is intended for use in a very limited number of situations, one of which might be a determination by the U.S. International Trade Commission of no likelihood of injury were a finding of dumping to be revoked.

8. Paragraph (b) of section 153.52 has been changed to reflect the current international monetary system which is characterized by flexible, rather than fixed currency exchange rates. The revised paragraph will provide that for purposes of fair value investigations in which the facts justify it, a longer term basis for measuring changes in exchange rates may be utilized in making price comparisons. Less than fair value sales should therefore not occur in such cases as a result of brief exchange rate fluctuations.

In addition to the above changes, a number of editorial corrections have been made in the text of the provisions originally proposed.

There is included as part of the revision a redesignation table showing the relationship of sections in the revised Part 153 to sections in the present Part 153.

Accordingly, Part 153 of the Customs Regulations (19 CFR Part 153) is revised as set forth below.

Effective date. This revision shall become effective 30 days after publication in the FEDERAL REGISTER. (905844)

(ADM–9–03)

VERNON D. ACREE,
Commissioner of Customs.

Approved June 17, 1976,
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER June 25, 1976 (41 FR 26203)]

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7. A new paragraph (e) of section 153.46 has been inserted to reflect the Secretary's authority in unusual circumstances to modify or revoke a finding of dumping without publication of a "Notice of Tentative Determination to Modify or Revoke Dumping Finding". This provision merely reflects existing authority and is intended for use in a very limited number of situations; one of which might be a determination by the U.S. International Trade Commission of no likelihood of injury were a finding of dumping to be revoked.

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Accordingly, Part 153 of the Customs Regulations (19 CFR Part 153) is revised as set forth below.

Effective date. This revision shall become effective 30 days after publication in the FEDERAL REGISTER. (068344)

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved June 17, 1976,
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER June 25, 1976 (41 FR 26205)]

PART 153 — ANTIDUMPING

214-099—76——3

PART 152 — ANTIDUMPING

Sec.

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Fair value based on sales in a third country by a related company.
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Fair value based on constructed value.
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Calculation of fair value.
Fair value; difference in quantities.
Fair value; circumstances of sale.
Fair value; similar merchandise.
Fair value; offering price.
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AUTHORITY: Secs. 201–212, 407, 42 Stat. 11 *et. seq*, as amended, sec. 5, 72 Stat. 585, secs. 406, 407, 42 Stat. 18; 5 U.S.C. 301, 19 U.S.C. 160–173. Other authorities are cited to text in parenthesis.

§ 153.0 Scope.

This part sets forth procedures and rules applicable to proceedings under the Antidumping Act, 1921, as amended, 19 U.S.C. 160, *et seq.* (hereafter referred to in this part as "the Act"), the assessment of the special dumping duty, and protests relating to matters under the Act.

SUBPART A—FAIR VALUE

§ 153.1 Fair value; definition.

For the purposes of section 201(a) of the Act (19 U.S.C. 160(a)), the fair value of the imported merchandise shall be determined in accordance with sections 153.2 through 153.7.

§ 153.2 Fair value based on price in the country of exportation; the usual test.

(a) *General.* Merchandise imported into the United States will ordinarily be considered to have been sold, or to be likely to be

AUTHORITY: Secs. 201-212, 407, 42 Stat. 11 et seq., as amended, sec. 5, 72 Stat. 585, secs. 406, 407, 42 Stat. 18; 5 U.S.C. 301; 19 U.S.C. 160-173. Other authorities are cited to text in parentheses.

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§ 153.1 Fair value; definition.

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§ 153.2 Fair value based on price in the country of exportation; the usual test.

(a) *General.* Merchandise imported into the United States will ordinarily be considered to have been sold, or to be likely to be

sold, at less than fair value if the purchase price or exporter's sales price (as defined in sections 203 and 204, respectively, of the Act (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Act (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Act (19 U.S.C. 170a(3))) is sold for consumption in the country of exportation on or about the date of purchase or agreement to purchase the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(b) *Restricted sales.* When home market sales form the appropriate basis of comparison, they may be used for this purpose whether or not they are restricted. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the home market price will be made.

§ 153.3 Fair value based on sales for exportation to countries other than the United States.

(a) *General.* If it is demonstrated, in a situation other than that provided for in section 153.4, that during a representative period the quantity of such or similar merchandise sold for consumption in the country of exportation is nonexistent or so small, in relation to the quantity sold for exportation to countries other than the United States, as to be an inadequate basis for comparison, then merchandise imported into the United States ordinarily will be deemed to have been sold, or to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Act (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Act (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Act (19 U.S.C. 170a(3))), is sold for exportation to countries other than the United States on or about the date of purchase or of agreement to purchase the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(b) *Restricted sales.* When third country sales form the appropriate basis of comparison, they may be used for this purpose whether or not they are restricted. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the third country price will be made.

§ 153.4 Fair value based on sales in a third country by a related company.

(a) *General.* Whenever the Secretary of the Treasury (hereafter referred to in this part as "the Secretary") has reasonable grounds to believe or suspect that the situation described in section 205(d) of the Act (19 U.S.C. 164(d)) exists, he will cause an appropriate investigation thereof to be made. If he determines that:

(1) During a representative period, the quantity of such or similar merchandise sold for consumption in the country of exportation by a particular company as determined under section 153.2 is nonexistent or is so small as to be inadequate as a basis for comparison with sales of merchandise by that company to the United States;

(2) The merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which owns or controls, directly or indirectly, other facilities for production of such or similar merchandise which are located in another country or countries; and

(3) The fair value of such or similar merchandise produced in one or more of the facilities outside the country of exportation, after adjustments as provided for in paragraph (b) of this section, is clearly higher than the fair value of such or similar merchandise produced in the facilities located in the country of exportation, then merchandise imported into the United States will be deemed to have been sold, or to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Act (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, of the Act (19 U.S.C. 164(d))), after adjustment as provided for therein, at which such or similar merchandise (as defined in section 212(3) of the Act (19 U.S.C. 170a(3))), is sold in substantial quantities by one or more facilities outside the country of exportation on or about the date of exportation of such merchandise to the United States.

(b) *Price calculations and adjustments.* In computing the price at which such or similar merchandise is sold by facilities outside the country of exportation, the Secretary ordinarily shall use the price at which the merchandise is sold for consumption in the country of manufacture. If such or similar merchandise is not sold in sufficient quantities in the country of manufacture to permit a price computation, the Secretary shall make his computation on the basis of the price at which such or similar merchandise is sold

§ 153.4 Fair value based on sales in a third country by a related company.

(a) *General.* Whenever the Secretary of the Treasury (hereafter referred to in this part as "the Secretary") has reasonable grounds to believe or suspect that the situation described in section 205(d) of the Act (19 U.S.C. 164(d)) exists, he will cause an appropriate investigation thereof to be made. It he determines that:

(1) During a representative period, the quantity of such or similar merchandise sold for consumption in the country of exportation by a particular company as determined under section 153.2 is nonexistent or is so small as to be inadequate as a basis for comparison with sales of merchandise by that company to the United States;

(2) The merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which owns or controls, directly or indirectly, other facilities for production of such or similar merchandise which are located in another country or countries; and

(3) The fair value of such or similar merchandise produced in one or more of the facilities outside the country of exportation, after adjustments as provided for in paragraph (b) of this section, is clearly higher than the fair value of such or similar merchandise produced in the facilities located in the country of exportation, then merchandise imported into the United States will be deemed to have been sold, or to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Act (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, of the Act (19 U.S.C. 164(d))), after adjustment as provided for therein, at which such or similar merchandise (as defined in section 212(3) of the Act (19 U.S.C. 170a(3))), is sold in substantial quantities by one or more facilities outside the country of exportation on or about the date of exportation of such merchandise to the United States.

(b) *Price calculations and adjustments.* In computing the price at which such or similar merchandise is sold by facilities outside the country of exportation, the Secretary ordinarily shall use the price at which the merchandise is sold for consumption in the country of manufacture. If such or similar merchandise is not sold in sufficient quantities in the country of manufacture to permit a price computation, the Secretary shall make his computation on the basis of the price at which such or similar merchandise is sold

for export to other countries. In making price comparisons under paragraph (a)(3) of this section, adjustment will be made for any difference in the costs of production of such or similar merchandise produced in facilities outside the country of exportation to the United States and costs of production of such or similar merchandise produced in facilities in the country of exportation to the United States. Cost of production differences for which adjustment will be made include differences in tax, labor, material, and overhead costs. Additionally, adjustments will be made for appropriately established differences between the two markets in quantities sold and circumstances of sale (sections 153.9 and 153.10).

(c) *Ownership or control.* A facility in a country outside the country of exportation ordinarily will be considered to be owned or controlled by a person, firm, or corporation whenever that person, firm, or corporation exercises any kind of substantial control, direct or indirect, whether or not legally enforceable, and however exercisable or exercised. Such indicia as stock ownership are meaningful, but it is the reality of control which is decisive.

§ 153.5 Fair value when sales are made at less than the cost of production.

Whenever the Secretary has reasonable grounds to believe or suspect that the price at which such or similar merchandise is sold for consumption in the country of exportation as determined under section 153.2, or as appropriate, the price at which such or similar merchandise is sold for exportation to countries other than the United States as determined under section 153.3, or the price at which such or similar merchandise is sold by facilities outside the country of exportation by a related company as determined under section 153.4, represents a price which is less than the cost of producing the merchandise, the Secretary shall disregard such sales in the determination of fair value if such sales:

(a) Have been made over an extended period of time and in substantial quantities, and

(b) Are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

Whenever sales are disregarded by virtue of having been made at less than the cost of production, and the remaining sales in the home market or, as appropriate, to third countries or by facilities outside the country of exportation by a related company, made at not less than the cost of production are determined to be inadequate as a basis for the determination of fair value, the Secretary shall

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determine fair value on the basis of the constructed value as defined in section 206 of the Act (19 U.S.C. 165). The cost of production ordinarily will be computed on the basis of the actual costs of materials, labor and general expenses, excluding profit, or, if necessary, on the basis of the best evidence available.

§ 153.6 Fair value based on constructed value.

If the information available is deemed by the Secretary to be insufficient or inadequate for a determination under section 153.2, 153.3, 153.4, or 153.5, he will determine fair value on the basis of the constructed value as defined in section 206 of the Act (19 U.S.C. 165).

§ 153.7 Merchandise from state-controlled-economy country.

If the information available indicates to the Secretary that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of fair value under section 153.2, 153.3, or 153.4, the Secretary shall determine fair value on the basis of the normal costs, expenses, and profits as reflected by either:

(a) The prices, determined in accordance with section 205(a) and section 202 of the Act (19 U.S.C. 164(a), 161), at which such or similar merchandise of a non-state-controlled-economy country or countries, including the United States, is sold either (1) for consumption in the home market of that country or countries, or (2) to other countries, including the United States; or

(b) The constructed value of such or similar merchandise in a non-state-controlled-economy country or countries, including the United States, as determined under section 206 of the Act (19 U.S.C. 165).

The prices or the constructed value of the United States produced merchandise generally will be utilized where sales or offers for sale of such or similar merchandise in any other non-state-controlled-economy country do not provide an adequate basis for comparison.

§ 153.8 Calculation of fair value.

In calculating fair value under section 201(a) of the Act (19 U.S.C. 160(a)), the criteria in sections 153.8 through 153.18 shall apply.

§ 153.9 Fair value; differences in quantities.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with such applicable criteria as sales or offers, on which a determination of fair value is to be based, comparisons normally will be made on sales of comparable quantities of the merchandise under consideration. Further, reasonable allowances will be made for differences in quantities, including such differences in individual sales, if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. In determining the question of allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of exportation with respect to the affording in the home market (or third country markets, where sales to third countries are the basis for comparison) of discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade.

(b) *Criteria for allowances.* Allowances for price discounts based on sales in large quantities ordinarily will not be made unless:

(1) *Six-month rule.* The exporter during the 6 months prior to the date when the question of dumping was raised or presented (or during such other period as investigation shows is more representative) had been granting quantity discounts of at least the same magnitude with respect to 20 percent or more of such or similar merchandise which he sold in the home market (or in third country markets when sales to third countries are the basis for comparison) and such discounts had been freely available to all purchasers; or

(2) *Cost justification.* The exporter can demonstrate that the discounts are warranted on the basis of savings which are specifically attributable to the quantities involved, such as savings with regard to production costs which result from the quantities produced.

(3) *Use in determining fair value.* If the exporter is able to meet the criteria set forth in paragraph (b)(1) of this section, the price of such or similar merchandise sold at a discount in the home market (or in third country markets when third countries are the basis for comparison) will ordinarily be used as the basis for determining the fair value of the merchandise. If the exporter is unable to meet the criteria in paragraph (b)(1) of this section, any sales of such or similar merchandise in the home market (or in third country markets, when third countries are the basis for comparison) which are made at a discount, together with sales not

made at a discount, will be used for purposes of section 153.16 in determining the fair value of the merchandise.

(c) *Price lists.* In determining whether a discount has been given, the existence of a published price list reflecting such a discount will not be controlling. A price list ordinarily will be disregarded where, in the line of trade under consideration, price lists are not commonly published, or, although commonly published, are not commonly adhered to.

§ 153.10 Fair value; circumstances of sale.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a direct relationship to the sales which are under consideration.

(b) *Examples.* Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances also will generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a direct relationship to the sales which are under consideration, allowances generally will not be made for differences in advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser; provided that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commission in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less. In making comparisions using exporter's sales price, reasonable allowance will be made for actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market.

made at a discount, will be used for purposes of section 153.16 in determining the fair value of the merchandise.

(c) *Price lists.* In determining whether a discount has been given, the existence of a published price list reflecting such a discount will not be controlling. A price list ordinarily will be disregarded where, in the line of trade under consideration, price lists are not commonly published, or, although commonly published, are not commonly adhered to.

§ 153.10 Fair value; circumstances of sale.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a direct relationship to the sales which are under consideration.

(b) *Examples.* Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances also will generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a direct relationship to the sales which are under consideration, allowances generally will not be made for differences in advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser; provided that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commission in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less. In making comparisons using exporter's sales price, reasonable allowance will be made for actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market.

(c) *Determination of allowances.* In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller but, where appropriate, may also consider the effect of such differences upon the market value of the merchandise.

§ 153.11 Fair value; similar merchandise.

In comparing the purchase price or the exporter's sales price, as the case may be, with the selling price in the home market, or for exportation to countries other than the United States in the case of similar merchandise described in subdivisions (B) or (C) of section 212(3) of the Act (19 U.S.C. 170a(3)), due allowance shall be made for differences in the merchandise. In this regard the Secretary will be guided primarily by the differences in cost of manufacture if it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences, but, when appropriate, he may also consider the effect of such differences upon the market value of the merchandise. In the case of merchandise which does not lend itself to comparison with other merchandise for the purpose of this section, the Secretary may use any method he finds appropriate to determine fair value and to adjust for any differences in the merchandise under consideration.

§ 153.12 Fair value; offering price.

In the determination of fair value, offers generally will be considered only in the absence of sales, but an offer made in circumstances in which acceptance is not reasonably to be expected will not be deemed to be an offer.

§ 153.13 Fair value; transactions between related persons.

(a) *Sales agencies.* If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207 of the Act (19 U.S.C. 166), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of fair value.

(b) *Sales to related persons.* If such or similar merchandise is sold, or in the absence of sales, offered for sale in the home market or, as appropriate, to third countries, to a person, firm, or corporation related to the seller of the merchandise in any of the respects

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(c) Determination of allowances. In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller but, where appropriate, may also consider the effect of such differences upon the market value of the merchandise.

§ 153.11 Fair value; similar merchandise.

In comparing the purchase price or the exporter's sales price, as the case may be, with the selling price in the home market, or for exportation to countries other than the United States in the case of similar merchandise described in subdivisions (B) or (C) of section 212(5) of the Act (19 U.S.C. 170a(3)), due allowance shall be made for differences in the merchandise. In this regard the Secretary will be guided primarily by the difference in cost of manufacture if it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences, but, when appropriate, he may also consider the effect of such differences upon the market value of the merchandise. In the case of merchandise which does not lend itself to comparison with other merchandise for the purpose of this section, the Secretary may use any method he finds appropriate to determine fair value and to adjust for any differences in the merchandise under consideration.

§ 153.12 Fair value; offering price.

In the determination of fair value, offers generally will be considered only in the absence of sales, but no offer made in circumstances in which acceptance is not reasonably to be expected will not be deemed to be an offer.

§ 153.13 Fair value; transactions between related persons.

(a) Sales agencies. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207 of the Act (19 U.S.C. 160), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of fair value.

(b) Sales to related persons. If such or similar merchandise is sold, or in the absence of sales, offered for sale in the home market or, as appropriate, in third countries, to a person, firm, or corporation related to the seller of the merchandise in any of the respects

described in section 207 of the Act (19 U.S.C. 166), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale to such person, firm, or corporation ordinarily will not be used in the determination of fair value.

§ 153.14 Fair value; fictitious sales.

In the determination of fair value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, will be taken into account.

§ 153.15 Fair value; level of trade.

The comparison of the purchase price or exporter's sales price (as defined in sections 203 and 204, respectively, of the Act (19 U.S.C. 162, 163)), as the case may be, with the applicable price in the home market of the country of exportation (or, as the case may be, the price to or in third country markets) generally will be made at the same commercial level of trade. However, if the Secretary finds that the sales of the merchandise to the United States or in the applicable foreign market at the same commercial level of trade are insufficient in number to permit an adequate comparison, the comparison will be made at the nearest comparable commercial level of trade and appropriate adjustments will be made for differences affecting price comparability.

§ 153.16 Fair value; sales at varying prices.

Where the prices of the sales which are being examined for a determination of fair value vary (after allowances provided for in sections 153.9, 153.10, 153.11, and 153.15), determination of fair value will take into account either the prices of a preponderance of the merchandise, or the weighted averages of the merchandise thus sold. Unless there is a clear preponderance of merchandise sold at the same price, weighted averages of the prices of the merchandise sold will normally be used. If there is not a clear preponderance of the merchandise sold at the same price and weighted averages of the prices of the merchandise sold are determined by the Secretary to be inappropriate, the Secretary will use any method for determining fair value which he deems appropriate.

§ 153.17 Fair value; shipments from intermediate country.

If the merchandise is not imported directly from the country of origin, but is shipped to the United States from another country, the price at which such or similar merchandise is sold in the country

of origin will be used in the determination of fair value if the merchandise was merely transshipped through the country of shipment.

§ 153.18 Merchandise resold in a changed condition.

If exporter's sales price (as defined in section 204 of the Act (19 U.S.C. 163)) is applicable and the imported merchandise is resold to an unrelated United States purchaser in a condition different from that in which it was imported, so long as the changed condition of the imported merchandise is such that it contains more than an insignificant amount, by quantity or value, of the imported merchandise, the Secretary may deduct the amount of any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after importation.

Subpart B—Availability of Information

Note: For Treasury Department and Customs Service general provisions relating to availability of information see 31 CFR Part 1 and Part 103 of this chapter.

§ 153.21 Information generally available.

In general, all information but not necessarily all documents obtained by the Treasury Department, including the Customs Service, in connection with any antidumping proceeding will be available for inspection or copying by any person. With respect to documents prepared by an officer or employee of the United States, factual matter, as distinguished from recommendations and evaluations, contained in any such documents will be made available by summary or otherwise on the same basis as information contained in other documents. Attention is directed to 31 CFR 1.6 relating to fees charged for searching for and providing copies of documents.

§ 153.22 Requests for confidential treatment of information.

(a) *Submission and contents of requests.* Any person who submits information in connection with an antidumping proceeding, including information submitted pursuant to section 153.26, may request that such information, or any specified part thereof, be granted confidential treatment. Information which is subject to such a request shall be set forth on separate pages; and all such pages shall be clearly marked "Confidential Treatment Requested". Each separate request for confidential treatment shall be accompanied by a

full statement of the reason or reasons why the submitting party believes that each piece of information subject thereto is entitled to confidential treatment within the guidelines set forth in § 153.23. It shall also be accompanied by one of the following:

(1) A summary or approximated presentation of all such information, which may be disclosed to the public, and which is sufficiently full and descriptive; or

(2) A statement by the submitting person that the information is not susceptible to summary of approximation, accompanied by a full statement of the reasons in support of this conclusion, including an explanation of the relevancy of the information in question to the matter under consideration.

(b) *Return of information as a result of non-conforming requests.* Any information accompanied by a request for confidential treatment which does not conform to the foregoing requirements (including the requirement that any summary or approximation be sufficiently full and descriptive) will be returned forthwith to the submitting person, and such information will not be considered in connection with the antidumping proceeding. Such information may be submitted with a new request for confidential treatment which complies with the requirements of this section, and will be dealt with in the same manner as an original submission of information with a request in acceptable form.

(c) *Consideration of requests.* The Commissioner of Customs (hereafter referred to in this Part as "the Commissioner") or the Secretary will determine pursuant to section 153.23 whether and to what extent requests for confidential treatment which conform to the specified requirements shall be granted and will also determine whether claims submitted under paragraph (a)(2) of this section shall be accepted.

(d) *Treatment of information.* If a request for confidential treatment of information is granted, the information covered thereby will not be made available for inspection or copying by any person other than an officer or employee of the United States Government or by a person who has been specifically authorized to receive such information by the person who requested the confidential treatment. If it is determined that:

(1) Any part of the material for which confidential treatment has been requested should be made available for disclosure in whole or in part; or

(2) Information claimed not to be susceptible to summary or approximation is in fact capable of such treatment, the submitting person will be notified. Unless he thereafter agrees that the informa-

full statement of the reason or reasons why the submitting party believes that each piece of information subject thereto is entitled to confidential treatment within the guidelines set forth in § 153.23. It shall also be accompanied by one of the following:

(1) A summary or approximated presentation of all such information, which may be disclosed to the public, and which is sufficiently full and descriptive; or

(2) A statement by the submitting person that the information is not susceptible to summary of approximation, accompanied by a full statement of the reasons in support of this conclusion, including an explanation of the relevancy of the information in question to the matter under consideration.

(b) *Return of information as a result of non-conforming requests.* Any information accompanied by a request for confidential treatment which does not conform to the foregoing requirements (including the requirement that any summary or approximation be sufficiently full and descriptive) will be returned forthwith to the submitting person, and such information will not be considered in connection with the antidumping proceeding. Such information may be submitted with a new request for confidential treatment which complies with the requirements of this section, and will be dealt with in the same manner as an original submission of information with a request in acceptable form.

(c) *Consideration of requests.* The Commissioner of Customs (hereafter referred to in this Part as "the Commissioner") or the Secretary will determine pursuant to section 153.23 whether and to what extent requests for confidential treatment which conform to the specified requirements shall be granted and will also determine whether claims submitted under paragraph (a)(2) of this section shall be accepted.

(d) *Treatment of information.* If a request for confidential treatment of information is granted, the information covered thereby will not be made available for inspection or copying by any person other than an officer or employee of the United States Government or by a person who has been specifically authorized to receive such information by the person who requested the confidential treatment. If it is determined that:

(1) Any part of the material for which confidential treatment has been requested should be made available for disclosure in whole or in part; or

(2) Information claimed not to be susceptible to summary or approximation is in fact capable of such treatment, the submitting person will be notified. Unless he thereafter agrees that the informa-

tion (including any summarized or approximated presentation thereof) may be disclosed to any person, or will be summarized or approximated in the case of matters found capable of such treatment, information for which confidential treatment was requested and any summarized or approximated presentation thereof which is deemed to be inadequate shall be returned to the submitting person and none of this material will be considered in connection with the antidumping matter in question.

§ 153.23 Standards for determining whether information will be regarded as privileged or confidential.

(a) *General.* Information ordinarily will be considered to be privileged or confidential if disclosure of the information is likely to have any of the following effects:

(1) To cause substantial harm to the competitive position of the person from whom the information was obtained;

(2) To have a significantly adverse effect upon the person supplying the information or upon the person from whom the information was obtained; or

(3) To impair the Secretary's ability to obtain necessary information in the future.

(b) *Information ordinarily regarded as appropriate for disclosure.* Except as provided in section 153.23(c), information ordinarily will be regarded as appropriate for disclosure if it:

(1) Relates to freely available price information;

(2) Relates to claimed freely available price allowances for quantity purchases; or

(3) Relates to freely available claimed differences in circumstances of sale.

(c) *Information ordinarily regarded as privileged or confidential.* Information ordinarily will be regarded as privileged or confidential if its disclosure would:

(1) Disclose business or trade secrets;

(2) Disclose production costs;

(3) Disclose distribution costs, except to the extent that information on such costs is freely available;

(4) Disclose the names of particular customers or the price or prices at which particular sales were made; or

(5) Disclose the names of particular persons from whom privileged or confidential information was obtained, if nondisclosure of the names has been requested and approved under section 153.26(b).

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Subpart C—Procedures and Determinations Under Antidumping Act, 1921, as Amended

§ 153.25 Suspected dumping; information from Customs officers.

If any district director of Customs has knowledge of any grounds for a reason to believe or suspect that any merchandise is being, or is likely to be, imported into the United States at a purchase price or exporter's sales price less than the fair value (or, in the absence of such value, then the constructed value), as contemplated by section 201(b) of the Act (19 U.S.C. 160(b)) and section 153.1, he shall communicate his belief or suspicion promptly to the Commissioner. Every such communication shall contain or be accompanied by a statement of substantially the same information as is required in section 153.27, if the district director has such information or if it is readily available to him.

§ 153.26 Suspected dumping; information from persons outside Customs Service.

(a) *General.* Any person outside the Customs Service who has information that merchandise is being, or is likely to be, imported into the United States under such circumstances as to bring it within the purview of the Act, may, on behalf of any industry in the United States, communicate such information in writing to the Commissioner.

(b) *Confidentially of names of persons raising question of dumping.* The names of persons outside the Customs Service who raise or present a question of dumping, and the name of any principal on whose behalf such a question is raised or presented, ordinarily will be considered information generally available under section 153.21. Any person outside the Customs Service who raises or presents a question of dumping may request that his name, or the name of his principal, if such person is acting as an agent, be held in confidence. Such request shall be accompanied by a statement of the reasons supporting the need for confidentiality. The Secretary or the Commissioner will determine whether confidentiality of the name or names is appropriate in accordance with section 153.23.

§ 153.27 Suspected dumping; nature of information to be made available.

(a) *General.* Communications to the Commissioner pursuant to section 153.26, in order to be considered to have been received in acceptable form and to be sufficient to allege that a particular class

or kind of merchandise is being or is likely to be sold in the United States or elsewhere at less than fair value and that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise, should contain the following information, in substantially the form described in subparagraphs (1)–(4) of this paragraph.

(1) *General Information*

(i) Name of the petitioner and person, firm or association which applicant represents, if any.

(ii) Percentage of the total United States production, sales and employment represented by the person, firm or corporation.

(iii) Indication whether the applicant has filed or is filing for other forms of import relief (e.g., under sections 201, 221, 251, 301 of the Trade Act of 1974, P.L. 93–618, or section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 2251, 2271, 2341, 2411, or 1337, respectively)), involving the class or kind of merchandise in question.

(2) *Description of Goods*

(i) A detailed description of the imported merchandise, including technical characteristics and use (supplemented by any available catalogues and illustrations), and, upon request by the Customs Service, samples of the imported and competitive domestic articles.

(ii) Tariff classification of the imported merchandise (if known).

(iii) The name of the country from which the merchandise is being, or is likely to be, imported.

(iv) The name of the foreign manufacturer(s), producer(s), and exporter(s) of the merchandise, if known.

(v) The ports or probable ports of importation into the United States.

(3) *Price Information—Fair Value*

(i) (A) The home market price in the country of exportation of such or similar merchandise; or, if such price information is not available, (B) the price from the country of exportation to a third country or countries of such or similar merchandise.

(ii) If the merchandise is being exported from a state-controlled-economy country, the price at which such or similar merchandise of a non-state-controlled-economy country or countries is sold for consumption in the home market of that country or countries or to other countries (including the United States if such or similar merchandise is not sold or offered for sale in any other non-state-controlled-economy country).

or kind of merchandise is being or is likely to be sold in the United States or elsewhere at less than fair value and that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise, should contain the following information, in substantially the form described in subparagraphs (1)–(4) of this paragraph.

(1) *General Information*

(i) Name of the petitioner and person, firm or association which applicant represents, if any.

(ii) Percentage of the total United States production, sales and employment represented by the person, firm or corporation.

(iii) Indication whether the applicant has filed or is filing for other forms of import relief (e.g., under sections 201, 221, 251, 301 of the Trade Act of 1974, P.L. 93–618, or section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 2251, 2271, 2341, 2411, or 1337, respectively)), involving the class or kind of merchandise in question.

(2) *Description of Goods*

(i) A detailed description of the imported merchandise, including technical characteristics and use (supplemented by any available catalogues and illustrations), and, upon request by the Customs Service, samples of the imported and competitive domestic articles.

(ii) Tariff classification of the imported merchandise (if known).

(iii) The name of the country from which the merchandise is being, or is likely to be, imported.

(iv) The name of the foreign manufacturer(s), producer(s), and exporter(s) of the merchandise, if known.

(v) The ports or probable ports of importation into the United States.

(3) *Price Information—Fair Value*

(i)(A) The home market price in the country of exportation of such or similar merchandise; or, if such price information is not available, (B) the price from the country of exportation to a third country or countries of such or similar merchandise.

(ii) If the merchandise is being exported from a state-controlled-economy country, the price at which such or similar merchandise of a non-state-controlled-economy country or countries is sold for consumption in the home market of that country or countries or to other countries (including the United States if such or similar merchandise is not sold or offered for sale in any other non-state-controlled-economy country).

(iii) If the information required under paragraph (a)(3)(i) is not available, the constructed value (as defined in section 206 of the Act (19 U.S.C. 165)) of such merchandise in the country of exportation; or, if the class or kind of merchandise in question is exported from a state-controlled-economy country and the information required under paragraph (a)(3)(ii) is not available, the constructed value of similar merchandise in a non-state-controlled-economy country.

(iv) The export price or, with respect to transactions involving an importer related to the exporter, the price to a non-related purchaser of such merchandise.

(v) Any information available as to any differences between the home market price or constructed value and the export price or non-related purchaser price which may be accounted for by any difference in taxes, discounts, merchandise, quantity of sales, level of commercial trade, incidental costs such as those for packing or freight, duty, or other items.

(vi) Optional: Any evidence which would tend to indicate that some or all of the sales in the home market are being made at a price which does not reflect the cost of production of the merchandise, and the circumstances under which such sales are made.

(vii) Optional: Any evidence which would tend to indicate that the prices of such or similar merchandise sold by the production facility in the country of exportation are lower than those of a related production facility in another country, with the names of all related facilities outside the country of exportation and available price information on each such facility. Such evidence should include any appropriate adjustments for the differences in (A) cost of production (including taxes, labor, materials and overhead), (B) circumstances of sale, and (C) sales quantities between the two production facilities. (In the absence of a sufficient allegation under this subparagraph, no inquiry pursuant to section 153.4 and section 205(d) of the Act (19 U.S.C. 164(d)) will be made.)

(viii) Such suggestions as the person furnishing the information may have as to specific avenues of investigation to be pursued or questions to be asked in seeking pertinent information.

(4) *Injury Information*

(i) Domestic production, sales and prices over the most recent three-year period for the firm or firms represented by the petitioner and for the industry.

(ii) Profitability of the firm or firms represented by the petitioner and of the industry for the most recent three-year period expressed in terms of a ratio to capital or revenue. Comparison to

the same ratios in other similar domestic industries and United States industry as a whole.

(iii) The capacity utilization of the firm or firms represented by the petitioner and that of the entire industry producing a competitive product.

(iv) The volume and value of all imports of this merchandise, and the volume and value of imports of the class or kind of merchandise from the country in question, over the most recent three-year period.

(v) The market share of the alleged less than fair value imports over the most recent three-year period.

(vi) The effect of the alleged less than fair value sales on the domestic prices (depression or suppression) and, the margin of underselling of the less than fair value imports, i.e., the extent to which the price discrimination permits the foreign exporter to undersell the domestic merchandise.

(vii) Unemployment of the firm or firms represented by the applicant, and of the entire industry over the most recent three-year period in absolute terms and as compared with United States industry as a whole and other similar industrial (or agricultural) sectors.

(viii) Capital investment by the firms represented by the applicant and the entire industry over a five-year period.

(ix) Names and addresses of all United States producers of competitive merchandise and the industry or trade association, if any, with indication of which producers support the application for an antidumping investigation.

(x) Any other factors relevant to possible injury or likelihood of injury to a domestic industry, or prevention of establishment of a domestic industry, such as domestic demand and supply conditions, number of domestic competitors and new entrants in the market, domestic productivity, export performance and increased foreign capacity.

(b) *Confidentiality of Information.* Communications to the Commissioner pursuant to section 153.26 regarding suspected dumping will not be considered to have been received in acceptable form or to be sufficient pursuant to the requirements listed in paragraph (a) of this section unless any documents or information essential to support the petition, for which confidential treatment is requested under Subpart B of this Part are accompanied by non-confidential summaries in accordance with section 153.22(a).

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§ 153.28 Adequacy of information.

If any information filed pursuant to section 153.26 does not conform substantially with the requirements of section 153.27, the Commissioner will return the communication to the person who submitted it with detailed written advice as to the respects in which it does not conform. Resubmission of information in conformity with the requirements of section 153.27 will be sufficient to form the basis for initiation of an investigation under section 153.29 and section 201 (c)(1) of the Act (19 U.S.C. 160(c)(1)).

§ 153.29 Initiation of antidumping proceeding; preliminary investigation.

(a) *General.* Upon receipt of information pursuant to section 153.25 or 153.26 in a form sufficient to allege the facts described in section 153.27(a), the Commissioner shall conduct a preliminary investigation. If he determines that the information is erroneous, or that merchandise of the class or kind is not being and is not likely to be imported in more than insignificant quantities, or for other reasons determines that further investigation is not warranted, he shall so advise the person who submitted the information and the case shall be closed.

(b) *Determination of Substantial Doubt of Injury.* If, in the course of a preliminary investigation under paragraph (a), the Secretary concludes, from the information available to him, that there is substantial doubt whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of merchandise which allegedly is being or is likely to be sold in the United States or elsewhere at less than its fair value, he shall forward all available information on the question to the United States International Trade Commission. The reasons for such substantial doubt and a preliminary indication, based upon whatever price information is available, concerning alleged sales at less-than fair value, including alleged margins of dumping and the volume of trade, shall be set forth by the Secretary. If the Commission determines within 30 days after receipt of such information from the Secretary that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, and so advises the Secretary, he shall terminate any investigation then in progress.

§ 153.25 Adequacy of information.

If any information filed pursuant to section 153.26 does not conform substantially with the requirements of section 153.27, the Commissioner will return the communication to the person who submitted it with a detailed written advice as to the respects in which it does not conform. Resubmission of information in conformity with the requirements of section 153.27 will be sufficient to form the basis for initiation of an investigation under section 153.29 and section 201 (c) (1) of the Act (19 U.S.C. 160(c)(1)).

§ 153.29 Initiation of antidumping proceeding; preliminary investigation.

(a) General. Upon receipt of information pursuant to section 153.25 or 153.26 in a form sufficient to allege the facts described in section 153.27(a), the Commissioner shall conduct a preliminary investigation. If he determines that the information is erroneous, or that merchandise of the class or kind is not being and is not likely to be imported in more than insignificant quantities, or for other reasons determines that further investigation is not warranted, he shall so advise the person who submitted the information and the case shall be closed.

(b) Determination of Substantial Doubt of Injury. If, in the course of a preliminary investigation under paragraph (a), the Secretary concludes, from the information available to him, that there is substantial doubt whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of merchandise which allegedly is being or is likely to be sold in the United States or elsewhere at less than its fair value, he shall forward all available information on the question to the United States International Trade Commission. The reasons for such substantial doubt and a preliminary indication, based upon whatever price information is available, concerning alleged sales at less-than fair value, including alleged margins of dumping and the volume of trade, shall be set forth by the Secretary. If the Commission determines within 30 days after receipt of such information from the Secretary that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, and so advises the Secretary, he shall terminate any investigation then in progress

by publishing a "Notice of Termination of Investigation Based on No Likelihood of Injury".

§ 153.30 Antidumping proceeding notice.

(a) *Publication of antidumping proceeding notice.* If the Secretary has determined that an investigation should be initiated into the question of whether a particular class or kind of merchandise is being or is likely to be sold in the United States at less than its fair value, he shall publish notice of the initiation of such an investigation in the FEDERAL REGISTER. Unless otherwise stated in the notice, the proceeding will relate to all merchandise of the class or kind in question from an exporting country. This notice, to be referred to as the "Antidumping Proceeding Notice", will indicate that information pursuant to section 153.25 or 153.26 in a form sufficient to support the allegations required under section 153.27(a) has been received, and will specify:

(1) A description of the merchandise involved;

(2) The date on which information in an acceptable form pursuant to section 153.27(a) was received for purposes of section 201(c)(1) of the Act (19 U.S.C. 160(c)(1));

(3) The fact that there is sufficient evidence on record concerning injury to or likelihood of injury to, or prevention of establishment of, an industry in the United States, a general statement as to the nature of such evidence, and, if it is decided to do so, a statement that the case was referred to the United States International Trade Commission under section 153.29(b) and section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)), for a determination as to whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of the subject merchandise into the United States; and

(4) A summary of the information received. If a person outside the Customs Service raised or presented the question of dumping, his name, or, if he is acting as an agent, the name of his principal, may be included in the notice unless a determination under section 153.26(b) precludes disclosure of the name.

(b) *Time limit on publication.* An "Antidumping Proceeding Notice" issued pursuant to section 153.30 shall be published in the FEDERAL REGISTER within 30 days after receipt of information pursuant to section 153.25 or 153.26 in an acceptable form pursuant to section 153.27(a).

by publishing a "Notice of Termination of Investigation Based on No Likelihood of Injury".

§ 153.39 Antidumping proceeding notice.

(a) *Publication of antidumping proceeding notice.* If the Secretary has determined that an investigation should be initiated into the question of whether a particular class or kind of merchandise is being or is likely to be sold in the United States at less than its fair value, he shall publish notice of the initiation of such an investigation in the FEDERAL REGISTER. Unless otherwise stated in the notice, the proceeding will relate to all merchandise of the class or kind in question from an exporting country. This notice, to be referred to as the "Antidumping Proceeding Notice", will indicate that information pursuant to section 153.25 or 153.26 in a form sufficient to support the allegations required under section 153.27(a) has been received, and will specify:

(1) A description of the merchandise involved;

(2) The date on which information in an acceptable form pursuant to section 153.27(a) was received for purposes of section 201(c)(1) of the Act (19 U.S.C. 160(c)(1));

(3) The fact that there is sufficient evidence on record concerning injury to or likelihood of injury to, or prevention of establishment of, an industry in the United States, a general statement as to the nature of such evidence, and, if it is decided to do so, a statement that the case was referred to the United States International Trade Commission under section 153.29(b) and section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)), for a determination as to whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of the subject merchandise into the United States; and

(4) A summary of the information received. If a person outside the Customs Service raised or presented the question of dumping, his name, or, if he is acting as an agent, the name of his principal, may be included in the notice unless a determination under section 153.29(b) precludes disclosure of the name.

(b) *Time limit on publication.* An "Antidumping Proceeding Notice" issued pursuant to section 153.30 shall be published in the FEDERAL REGISTER within 30 days after receipt of information pursuant to section 153.25 or 153.26 in an acceptable form pursuant to section 153.27(a).

§ 153.31 Full-scale investigation.

(a) *Initiation of investigation.* Upon publication of an "Antidumping Proceeding Notice", the Commissioner shall proceed by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by section 153.32. In order to verify the information presented, or to obtain further details, investigations will, where appropriate, be conducted by Customs representatives in foreign countries, unless the country concerned objects to the investigation. If an adequate investigation is not permitted, or if any information deemed necessary is withheld, the Secretary will reach a determination on the basis of such information as is available to him.

(b) *Pricing information.* Ordinarily the Commissioner will require the foreign manufacturer, producer, or exporter to submit pricing information covering a period of at least 120 days prior to, and 60 days after the first day of the month during which the information pursuant to section 153.25 or 153.26 was received in acceptable form pursuant to section 153.27(a). The Commissioner may, however, require the submission of pricing information for such other period as he deems necessary; and he may also require the submission of pricing information on a current basis during the course of an investigation.

(c) *Comments from interested persons.* During the course of an antidumping proceeding, interested persons may make such written submissions as they desire. Appropriate consideration will be given to any new or additional information submitted. The Secretary also may at any time invite any person or persons to supply him orally or in writing with information or argument.

§ 153.32 Determination as to belief or suspicion of the existence of sales at less than fair value—time limits.

Within six months after the date of publication of an "Antidumping Proceeding Notice", the Secretary will make the determination required in subsection 201(b)(1) of the Act (19 U.S.C. 160(b)(1)). If his determination is affirmative, he will publish in the FEDERAL REGISTER a "Withholding of Appraisement Notice" (section 153.35). If his determination is negative, he will publish a "Notice of Tentative Determination of Sales at Not Less than Fair Value" (section 153.34). If his determination is to discontinue a proceeding, he will publish a "Notice of Tentative Discontinuance

§ 153.31 Full-scale investigation.

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(c) *Comments from interested persons.* During the course of an antidumping proceeding, interested persons may make such written submissions as they desire. Appropriate consideration will be given to any new or additional information submitted. The Secretary also may at any time invite any person or persons to supply him orally or *in writing with information or argument.*

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of Antidumping Investigation" (section 153.33). If in the course of an investigation the Secretary concludes that the determination required in subsection 201(b)(1) of the Act (19 U.S.C. 160(b)(1)) cannot reasonably be made within six months, he will publish an appropriate notice to this effect in the FEDERAL REGISTER, stating the reasons for his conclusion, and that the determination will be made within nine months after the publication of the "Antidumping Proceeding Notice."

§ 153.33 Discontinuance of antidumping investigation.

(a) *Price assurances, termination of sales or other circumstances.* Whenever the Secretary is satisfied during the course of an antidumping investigation that:

(1) The possible margins of dumping involved are minimal in relation to the volume of exports of the merchandise in question, price revisions have been made which eliminate any likelihood of present sales at less than fair value, and assurances have been received which eliminate any likelihood of sales at less than fair value in the future; or

(2) Sales to the United States of the merchandise have terminated and will not be resumed and assurances have been received to this effect; or

(3) There are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation, the Secretary may publish a "Notice of Tentative Discontinuance of Antidumping Investigation" in the FEDERAL REGISTER.

(b) *Notice of Tentative Discontinuance of Antidumping Investigation.* If it appears to the Secretary that discontinuance of the antidumping investigation may be warranted, he will publish a "Notice of Tentative Discontinuance of Antidumping Investigation" in the FEDERAL REGISTER which will include the elements described in section 153.39. In the case of investigations tentatively discontinued pursuant to paragraph (a)(2) of this section, the notice will identify the manufacturers, producers, or exporters who have furnished appropriate assurances. The notice will also state that interested persons shall be given the opportunity to present their views under the procedure set forth in section 153.40. The tentative acceptance of price assurances or of assurances of termination of sales to the United States, by publication of a "Notice of Tentative Discontinuance of Antidumping Investigation" and price revisions or the termination of sales to the United States will not prevent the Secretary from issuing a "Withholding

of Antidumping Investigation" (section 153.33). If in the course of an investigation the Secretary concludes that the determination required in subsection 201(b)(1) of the Act (19 U.S.C. 160(b)(1)) cannot reasonably be made within six months, he will publish an appropriate notice to this effect in the FEDERAL REGISTER, stating the reasons for his conclusion, and that the determination will be made within nine months after the publication of the "Antidumping Proceeding Notice."

§ 153.33 Discontinuance of antidumping investigation.

(a) *Price assurances, termination of sales or other circumstances.* Whenever the Secretary is satisfied during the course of an antidumping investigation that:

(1) The possible margins of dumping involved are minimal in relation to the volume of exports of the merchandise in question, price revisions have been made which eliminate any likelihood of present sales at less than fair value, and assurances have been received which eliminate any likelihood of sales at less than fair value in the future; or

(2) Sales in the United States of the merchandise have terminated and will not be resumed and assurances have been received to this effect; or

(3) There are other circumstances on the basis of which it may no longer be appropriate to continue an antidumping investigation, the Secretary may publish a "Notice of Tentative Discontinuance of Antidumping Investigation" in the FEDERAL REGISTER.

(b) *Notice of Tentative Discontinuance of Antidumping Investigation.* If it appears to the Secretary that discontinuance of the antidumping investigation may be warranted, he will publish a "Notice of Tentative Discontinuance of Antidumping Investigation" in the FEDERAL REGISTER which will include the elements described in section 153.32. In the case of investigations tentatively discontinued pursuant to paragraph (a)(2) of this section, the notice will identify the manufacturers, producers, or exporters who have furnished appropriate assurances. The notice will also state that interested persons shall be given the opportunity to present their views under the procedure set forth in section 153.40. The tentative acceptance of price assurances or of assurances of termination of sales to the United States, by publication of a "Notice of Tentative Discontinuance of Antidumping Investigation" and price revisions or the termination of sales to the United States will not prevent the Secretary from issuing a "Withholding

of Appraisement Notice" and from making a "Determination of Sales at Less Than Fair Value" in any case where he considers such action appropriate.

(c) *Statement concerning assurances.* Assurances provided for in paragraph (a) of this section shall be in substantially the following form:

I hereby certify that I am ---------- (an officer) ---------- of ---------- (attorney-in-fact) ---------- (name of foreign manufacturer, producer, or exporter) ---------- and am authorized, on behalf of ---------- (name of foreign manufacturer, producer, or exporter) ---------- to give assurances that (select the applicable provision):

1. All future sales of ---------- (commodity) ---------- by ---------- (name of foreign manufacturer, producer, or exporter) ---------- for exportation to the United States shall be made at prices which are not less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160, *et seq.*) and that ---------- (name of foreign manufacturer, producer, or exporter) ---------- shall make a report to the Commissioner of Customs which shall contain or be accompanied by the information required by section 153.33(f) of the Customs Regulations (19 CFR 153.33(f)) for such period of time and at such intervals as the Secretary may deem appropriate and shall cooperate in allowing whatever verification of such information is deemed necessary by the Secretary; or

2. All sales of ---------- (commodity) ---------- by ---------- (name of foreign manufacturer, producer, or exporter) ---------- for exportation to the United States have terminated and shall not be resumed.

---------- (Officer or Attorney-in-fact)

(d) *Final discontinuance.* Within three months after publication of a "Notice of Tentative Discontinuance of Antidumping Investigation", the Secretary will determine whether final discontinuance is warranted and, if he determines that it is warranted, publish a "Notice of Discontinuance of Antidumping Investigation" in the FEDERAL REGISTER.

(e) *Final discontinuance after issuance of a "Withholding of Appraisement Notice" or a "Tentative Determination of Sales at Not Less than Fair Value".* The procedures specified in paragraphs (b) and (d) of this section shall not apply if the decision to issue a

of Appraisement Notice" and from making a "Determination of Sales at Less Than Fair Value" in any case where he considers such action appropriate.

(c) Statement concerning assurances. Assurances provided for in paragraph (a) of this section shall be in substantially the following form:

I hereby certify that I am .....
(an officer)

..... of .....
(attorney-in-fact) (name of foreign firm)

..... and am authorized,
(partner, president, or corporate)

on behalf of .....
(name of foreign manufacturer, producer, or exporter)

..... to give assurances that (select the applicable provision):
(exporter)

1. All future sales of ..... by .....
(merchandise) (name of foreign manufacturer, producer, or exporter)

for exportation to the United States shall be made at prices which are not less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160, et seq.) and that .....
(name of foreign manufacturer, producer, or exporter)

shall make a report to the Commissioner of Customs which shall contain or be accompanied by the information required by section 153.33(f) of the Customs Regulations (19 CFR 153.33(f)) for such period of time and at such intervals as the Secretary may deem appropriate and shall cooperate in allowing whatever verification of such information is deemed necessary by the Secretary; or

2. All sales of ..... by .....
(merchandise) (name of foreign manufacturer, producer, or exporter)

..... for exportation to the United States have terminated and shall not be resumed.

.....
(Office or Antidumping Duties)

(d) Final discontinuance. Within three months after publication of a "Notice of Tentative Discontinuance of Antidumping Investigation", the Secretary will determine whether final discontinuance is warranted and, if he determines that it is warranted, publish a "Notice of Discontinuance of Antidumping Investigation" in the Federal Register.

(e) Final discontinuance after issuance of a "Withholding of Appraisement Notice" or a "Tentative Determination of Sales at Not Less than Fair Value". The procedures specified in paragraphs (b) and (d) of this section shall not apply if the decision to issue a

"Notice of Discontinuance of Antidumping Investigation" is made by the Secretary after a "Withholding of Appraisement Notice" or "Tentative Determination of Sales at Not Less than Fair Value" has been issued and thereafter he has afforded interested persons an opportunity to be heard pursuant to the provisions of section 153.40. In lieu thereof a "Notice of Discontinuance of Antidumping Investigation" containing a statement of reasons will be published within 3 months after publication of the "Withholding of Appraisement Notice" or "Tentative Determination of Sales at Not Less than Fair Value".

(f) *Periodic reports by foreign exporters.* Whenever an investigation has been discontinued by the Secretary on the basis of price assurances, the foreign manufacturer, producer, or exporter of the merchandise which was the subject of the discontinued investigation shall thereafter make a report to the Commissioner for such period of time and at such intervals as the Secretary may deem appropriate. The periodic reports to the Commissioner generally shall, as determined by the Secretary, contain or be accompanied by the following:

(1) Prices at, and the terms and conditions on which, the merchandise is being sold for export to the United States and in the applicable foreign market (or information regarding constructed value as set forth in section 206 of the Act (19 U.S.C. 165));

(2) Published price lists, if any;

(3) Information regarding discounts, quantities involved on a per sale basis, shipping charges, packing costs, and other circumstances of sales in the two markets under consideration;

(4) Information regarding differences in cost of manufacture where similar merchandise is compared pursuant to section 153.11; and

(5) Such other information which the Secretary deems appropriate.

(g) *Reopening of discontinued investigation.* In the event that the Secretary determines, subsequent to the discontinuance of an investigation pursuant to paragraph (d) of this section, that there are reasonable grounds to believe or suspect that there are or are likely to be sales to the United States at less than fair value, he will reopen the investigation by publishing forthwith in the FEDERAL REGISTER a "Withholding of Appraisement Notice" with respect to the merchandise. If, prior to the discontinuance of the investigation, importers and exporters concerned had requested a six-month withholding of appraisement pursuant to section 153.35(b), when the investigation is reopened the Secretary may withhold appraise-

"Notice of Discontinuance of Antidumping Investigation" is made by the Secretary after a "Withholding of Appraisement Notice" or "Tentative Determination of Sales at Not Less than Fair Value" has been issued and thereafter he has afforded interested persons an opportunity to be heard pursuant to the provisions of section 153.40. In lieu thereof a "Notice of Discontinuance of Antidumping Investigation" containing a statement of reasons will be published within 3 months after publication of the "Withholding of Appraisement Notice" or "Tentative Determination of Sales at Not Less than Fair Value".

(f) *Periodic reports by foreign exporters.* Whenever an investigation has been discontinued by the Secretary on the basis of price assurances, the foreign manufacturer, producer, or exporter of the merchandise which was the subject of the discontinued investigation shall thereafter make a report to the Commissioner for such period of time and at such intervals as the Secretary may deem appropriate. The periodic reports to the Commissioner generally shall, as determined by the Secretary, contain or be accompanied by the following:

(1) Prices at, and the terms and conditions on which, the merchandise is being sold for export to the United States and in the applicable foreign market (or information regarding constructed value as set forth in section 206 of the Act (19 U.S.C. 165));

(2) Published price lists, if any;

(3) Information regarding discounts, quantities involved on a per sale basis, shipping charges, packing costs, and other circumstances of sales in the two markets under consideration;

(4) Information regarding differences in cost of manufacture where similar merchandise is compared pursuant to section 153.11; and

(5) Such other information which the Secretary deems appropriate.

(g) *Reopening of discontinued investigation.* In the event that the Secretary determines, subsequent to the discontinuance of an investigation pursuant to paragraph (d) of this section, that there are reasonable grounds to believe or suspect that there are or are likely to be sales to the United States at less than fair value, he will reopen the investigation by publishing forthwith in the FEDERAL REGISTER a "*Withholding of Appraisement Notice*" with respect to the merchandise. If, prior to the discontinuance of the investigation, importers and exporters concerned had requested a six-month withholding of appraisement pursuant to section 153.35(b), when the investigation is reopened the Secretary may withhold apprais-

ment for six months. If no such requests have been received, the Secretary may withhold appraisement pursuant to section 153.35(a) and may issue a "Determination of Sales at Less than Fair Value". If the withholding of appraisement is for six months, it may be made effective with respect to merchandise entered, or withdrawn from warehouse, for consumption not more than 90 days before the date of publication of the "Withholding of Appraisement Notice". Whenever an investigation is reopened, interested persons will be given the opportunity to present their views pursuant to section 153.40.

(h) *Termination of discontinued investigations.* The Secretary may, either upon his own initiative or upon the request by a foreign manufacturer, producer, or exporter or by a United States importer of the merchandise concerned, consider terminating a discontinued investigation. Consideration of termination will occur when the Secretary determines that an appropriate period of time has elapsed after the issuance of a "Notice of Discontinuance of Antidumping Investigation". Generally such time period will be two years, but the Secretary may determine that a longer or shorter period of time is appropriate.

(1) When the Secretary is satisfied that termination of a discontinued investigation is appropriate, he will publish a "Notice of Tentative Termination of Antidumping Investigation" in the FEDERAL REGISTER. The notice will set forth those elements required under section 153.39, and will state that interested persons shall be given the opportunity to present their views under the procedure set forth in section 153.40.

(2) As soon as possible thereafter the Secretary will determine whether final termination is warranted and, if he so determines, will publish a "Notice of Termination of Antidumping Investigation" in the FEDERAL REGISTER. Otherwise, a notice setting forth the reasons why final termination is not warranted will be published in the FEDERAL REGISTER.

(i) *Re-entry into the United States market.* Foreign manufacturers, producers, or exporters whose merchandise has been the subject of a final discontinuance based upon assurances of termination of sales to the United States under paragraph (a)(2) of this section, may petition the Secretary to permit them to resume sales of the merchandise without having such resumption of sales constitute a violation of any assurances given. Such permission may be granted if the Secretary determines that sales to the United States have been terminated for a significant period of time, ordinarily at least two years, and if the manufacturers, producers, or exporters con-

ment for six months. If no such requests have been received, the Secretary may withhold appraisement pursuant to section 153.35(a) and may issue a "Determination of Sales at Less than Fair Value". If the withholding of appraisement is for six months, it may be made effective with respect to merchandise entered, or withdrawn from warehouse, for consumption not more than 90 days before the date of publication of the "Withholding of Appraisement Notice". Whenever an investigation is reopened, interested persons will be given the opportunity to present their views pursuant to section 153.40.

(b) *Termination of discontinued investigations.* The Secretary may, either upon his own initiative or upon the request by a foreign manufacturer, producer, or exporter or by a United States importer of the merchandise concerned, consider terminating a discontinued investigation. Consideration of termination will occur when the Secretary determines that an appropriate period of time has elapsed after the issuance of a "Notice of Discontinuance of Antidumping Investigation". Generally such time period will be two years, but the Secretary may determine that a longer or shorter period of time is appropriate.

(1) When the Secretary is satisfied that termination of a discontinued investigation is appropriate, he will publish a "Notice of Tentative Termination of Antidumping Investigation" in the FEDERAL REGISTER. The notice will set forth those elements required under section 153.39, and will state that interested persons shall be given the opportunity to present their views under the procedure set forth in section 153.40.

(2) As soon as possible thereafter the Secretary will determine whether final termination is warranted and, if he so determines, will publish a "Notice of Termination of Antidumping Investigation" in the FEDERAL REGISTER. Otherwise, a notice setting forth the reasons why final termination is not warranted will be published in the FEDERAL REGISTER.

(i) *Re-entry into the United States market.* Foreign manufacturers, producers, or exporters whose merchandise has been the subject of a final discontinuance based upon assurances of termination of sales to the United States under paragraph (a)(2) of this section, may petition the Secretary to permit them to resume sales of the merchandise without having such resumption of sales constitute a violation of any assurances given. Such permission may be granted if the Secretary determines that sales to the United States have been terminated for a significant period of time, ordinarily at least two years, and if the manufacturers, producers, or exporters con-

cerned provide assurances, in the form prescribed in paragraph (c) of this section, that there will be no sales of the merchandise at less than fair value. Manufacturers, producers, or exporters re-entering the United States market may be required to submit periodic reports, as described in paragraph (f) of this section, for whatever period of time the Secretary deems appropriate, and will be subject to the provisions in paragraph (g) of this section. Notice of any decion to grant such permission will be published in the FEDERAL REGISTER.

§ 153.34 Negative determination.

(a) *Notice of Tentative Determination of Sales at Not Less Than Fair Value.* If it appears to the Secretary that there is no reason to believe or suspect from the information presented to him, that sales are at less than fair value, and that it is appropriate to issue a "Tentative Determination of Sales at Not Less Than Fair Value", he will publish such a notice in the FEDERAL REGISTER, which will include the elements described in section 153.39. Opportunity to present views will be provided pursuant to section 153.40.

(b) *Quantities involved and differences in price.* Merchandise will not be deemed to have been sold at less than fair value unless the quantity involved in the sale or sales to the United States, or the differences between the purchase price or the exporter's sales price and the fair value, as the case may be, is more than insignificant.

(c) *Final determination.* Within three months after publication of a "Tentative Determination of Sales at Not Less than Fair Value", the Secretary will determine whether a final negative determination is warranted and, if he determines that it is warranted, will publish a "Determination of Sales at Not Less than Fair Value" in the FEDERAL REGISTER.

(d) *Negative determination after issuance of a "Withholding of Appraisement Notice" or a "Notice of Tentative Discontinuance of Antidumping Investigation".* The procedure specified in paragraphs (a) and (c) of this section shall not apply if the decision to issue a negative determination is made by the Secretary after a "Withholding of Appraisement Notice" or a "Notice of Tentative Discontinuance of Antidumping Investigation" has been issued and thereafter he has afforded interested persons an opportunity to be heard pursuant to the provisions of section 153.40. In lieu thereof, a "Determination of Sales at Not Less than Fair Value", which will set forth the statement of reasons therefor, shall be published within three months after publication of the "Withholding of Appraise-

ment Notice" or "Notice of Tentative Discontinuance of Antidumping Investigation".

§ 153.35 Withholding of aprraisement.

(a) *Three-month period.* If the Secretary determines, with regard to the class or kind of merchandise in question, that there is reason to believe or suspect that the purchase price is less, or that the exporter's sales price is less or is likely to be less than the fair value of such or similar merchandise, and if there is evidence on record concerning injury or likelihood of injury to or prevention of establishment of an industry in the United States, he shall publish notice of these facts in the FEDERAL REGISTER in a "Withholding of Appraisement Notice", containing all of the elements described in section 153.39. Additionally, the notice shall indicate (1) the expiration date of the notice (which shall be no more than three months from the date of publication of the notice in the FEDERAL REGISTER, unless a longer period of withholding of appraisement has been requested pursuant to paragraph (b) of this section and approved by the Secretary), and (2) any foreign manufacturers, producers, or exporters of the merchandise concerned who are excluded pursuant to section 153.38. This withholding of appraisement notice will be issued concurrently with the Secretary's determination pursuant to section 153.36, unless appraisement is being withheld pursuant to paragraph (b) of this section.

(b) *Six-month period.* At any time prior to the issuance of the "Withholding of Appraisement Notice" referred to in paragraph (a) of this section, an importer and an exporter concerned may request that the period of withholding of appraisement extend for a period longer than three months, but in no case longer than six months. Upon receipt of such a request, the Secretary will decide whether appraisement should be withheld for a period longer than three months. If the Secretary decides that a period of withholding of appraisement longer than three months is justified, he will publish a "Withholding of Appraisement Notice" upon the same basis and containing information of the same type as is required by paragraph (a) of this section, except that the expiration date of the notice may be six months from the date of publication of the notice in the FEDERAL REGISTER.

(c) *Advice to the district directors of Customs.* The Commissioner shall advise all district directors of Customs of the Secretary's action. Upon receipt of such advice each district director of Customs shall proceed to withhold appraisement in accordance with the pertinent provisions of section 153.48.

ment Sale" or "Notice of Tentative Discontinuance of anti-dumping Investigation."

§ 153.35 *Withholding of appraisement.*

(a) Whenever, [illegible] the Secretary [illegible], with regard to the class or kind of merchandise [illegible] reason to believe or suspect that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or in the absence of such value, [illegible]) and [illegible] injury or likelihood of injury [illegible] or is prevented from being established in the United States, he shall publish a notice of these facts in the FEDERAL REGISTER as a "Withholding of Appraisement Notice" [illegible] of the merchandise described in section 153.32. Additionally, [illegible] the notice [illegible] shall not exceed 6 months from the date of publication of the notice in the FEDERAL REGISTER unless a longer period of withholding of appraisement has been requested [illegible] by the exporters [illegible] or any foreign manufacturer, producer, or exporter of the merchandise [illegible] in section 153.32. The withholding of appraisement [illegible] in section 153.48 [illegible] paragraph (b) of this section.

(b) *Six-month period.* At any time prior to the publication of the "Withholding of Appraisement Notice" [illegible] paragraph (a) of this section, exporters [illegible] request that [illegible] period of [illegible] months [illegible] whether [illegible] "Withholding of Appraisement Notice" [illegible] and containing the information [illegible] in paragraph (a) of this section, except that the withholding [illegible] may begin 6 months from the date of publication [illegible] in the FEDERAL REGISTER.

(c) *Advice to the district directors of Customs.* The Commissioner shall advise all district directors of Customs of the Secretary's action. Upon receipt of such advice each district director of Customs shall proceed to withhold appraisement in accordance with the applicable provisions of section 153.48.

(d) *Retroactive withholding of appraisement.* In the event the Secretary issues a "Withholding of Appraisement Notice" pursuant to paragraph (a) or (b) of this section, the Secretary, in such circumstances as he deems appropriate, may specify as the effective date of such notice a date prior to the date of publication of the "Withholding of Appraisement Notice". For example, such action would appear to be appropriate when appraisement is withheld regarding a class or kind of merchandise as to which a dumping finding has been revoked, at least in part on the basis of price assurances, and the Secretary concludes such situation reflects a history or pattern of below fair value sales.

§ 153.36 Affirmative determination.

If it appears to the Secretary on the basis of the information before him that foreign merchandise is being or is likely to be sold in the United States at less than its fair value, and that a determination to that effect is required, unless a "Withholding of Appraisement Notice" was published pursuant to section 153.35(b), he will publish in the FEDERAL REGISTER a "Determination of Sales at Less Than Fair Value". This determination will include all of the elements described in section 153.39.

§ 153.37 Affirmative determination; appraisement withheld pursuant to section 153.35(b).

(a) *General.* If within three months of the publication of a "Withholding of Appraisement Notice" pursuant to section 153.35(b), it appears to the Secretary on the basis of the information before him that foreign merchandise is being or is likely to be sold in the United States at less than its fair value, and that a determination to that effect is required, he will publish his "Determination of Sales at Less Than Fair Value." This determination will contain the information required under section 153.39.

(b) *Affirmative determination after issuance of a "Notice of Tentative Determination of Sales at Not Less Than Fair Value" or a "Notice of Tentative Discontinuance of Antidumping Investigation".* The procedure specified in paragraph (a) of this section shall not apply if the decision to issue an affirmative determination is made by the Secretary after a "Notice of Tentative Determination of Sales at Not Less Than Fair Value" or a "Notice of Tentative Discontinuance of Antidumping Investigation" has been issued and thereafter he has afforded interested persons an opportunity to be heard pursuant to the provisions of section 153.40. In lieu thereof a

"Determination of Sales at Less Than Fair Value", which will set forth the statement of reasons therefor, will be published within three months after publication of the "Notice of Tentative Determination of Sales at Not Less Than Fair Value" or a "Notice of Tentative Discontinuance of Antidumping Investigation".

§ 153.38 Exclusions from a "Withholding of Appraisement Notice", a "Determination of Sales at Less Than Fair Value", or a "Finding of Dumping", and Partial Discontinuances.

The Secretary may exclude one or more foreign manufacturers, producers or exporters from a "Withholding of Appraisement Notice" or a "Determination of Sales at Less Than Fair Value" or discontinue the investigation with respect to one or more manuturers, producers or exporters if (i) he finds that all examined exports of the merchandise in question to the United States by the manufacturer, producer, or exporter in question during the period under consideration were made at prices not less than the fair value of the merchandise concerned, or (ii) he is satisfied during the course of the investigation that the possible margins of dumping are minimal in relation to the volume of exports of the merchandise in question by such manufacturer, producer or exporter, price revisions have been made which eliminate any likelihood of present sales at less than fair value, and assurances have been received which eliminate any likelihood of sales at less than fair value in the future; respectively. Usually, information on 100% of the exports in question will be required to be submitted to support a request for exclusion or discontinuance. In exceptional cases, the Secretary may determine that examination of a lesser percentage (never less than 75%) is adequate. If a manufacturer, producer, or exporter wishes to be considered for exclusion or discontinuance, he must submit information on his sales to permit such consideration by the Secretary, whether or not information on his sales has been requested by the Commissioner. The Secretary also may exclude or discontinue from the investigation a foreign manufacturer, producer or exporter, who was not excluded or as to whom the investigation was not discontinued, from a "Determination of Sales at less than Fair Value", from a "Finding of Dumping", provided the information necessary to support such exclusion or discontinuance is received, verified, and analyzed by the Department of the Treasury in time to be considered by the United States International Trade Commission in making its injury determination. Companies not excluded or as to which the investigation was not discontinued under this

section will become subject to a finding of dumping, should one be issued, and must thereafter petition for a revocation pursuant to section 153.44 in order to be excluded from such finding.

§ 153.39 Content of determinations.

Whenever the Secretary makes any tentative or final determination, or issues a "Withholding of Appraisement Notice", pursuant to the provisions of this subpart, he shall include in the notice of such determination published in the FEDERAL REGISTER the following information:

(a) A description of the merchandise involved;

(b) The name of the country of exportation;

(c) If practicable, the name of the manufacturer(s), producer(s), or exporter(s);

(d) The date of the receipt of the information in acceptable form pursuant to the requirements of section 153.27; and

(e) A complete statement of findings and conclusions, and the reasons or bases therefor, on all the material issues of fact or law presented (consistent with requirements of confidentiality under subpart B of this part).

§ 153.40 Opportunity to present views.

Pursuant to publication in the FEDERAL REGISTER of a "Withholding of Appraisement Notice", any other notice of tentative disposition of an antidumping investigation, or a notice of tentative modification or revocation of a dumping finding, the Secretary shall, at the request of any interested person, conduct a hearing and shall provide an opportunity to present views in writing as set forth in this section. Where no request has been made for a withholding of appraisement under section 153.35(b), and it appears that a withholding of appraisement may be required, persons known to be interested will be so informed in sufficient time so they may request that a hearing be held before simultaneous publication of the "Notice of Withholding of Appraisement" and "Determination of Sales at Less Than Fair Value".

(a) *Oral.* At any hearing conducted by the Secretary:

(1) Any interested person shall have the right to appear by counsel or in person; and

(2) Any other person, firm, or corporation may make application and, upon good cause shown, may be allowed by the Secretary to intervene and appear at such hearing by counsel or in person.

"Interested person" as used in this section means any foreign manufacturer, producer, or exporter, any domestic importer of the foreign merchandise in question, and any domestic manufacturer, producer, or wholesaler of merchandise of the same class or kind as is the subject of the antidumping proceeding. All requests for hearings shall be accompanied by a statement outlining the issues which the person wishes to discuss. With respect to a "Withholding of Appraisement Notice" issued pursuant to section 153.35(a), such hearing ordinarily will be held within three weeks of the date of the request unless it is clearly impracticable to do so. In all other cases the hearing will normally be held within five weeks of the publication of the "Withholding of Appraisement Notice", or other notice of the tentative disposition of an antidumping investigation, a notice of tentative modification or revocation of a dumping finding, or a notice of any other tentative action under this part. Reasonable notice of the hearing will be given to all interested persons of record. One week prior to such a hearing, pre-hearing briefs shall be submitted to the Secretary and the Commissioner and exchanged among interested persons. Persons will be restricted, in their oral presentations, to issues raised in this pre-hearing brief. Any person not submitting such a brief ordinarily will be restricted to rebuttal of points made by other persons. Ordinarily, the presiding officer at a hearing will provide an opportunity for the submission of post-hearing briefs, within the time limits prescribed at the hearing. The Secretary may at any time invite any person or persons to supply him orally with information or argument. The hearings provided for under this section shall be exempt from the provisions of 5 U.S.C. 554, 555, 556, 557, and 702. The transcript of any hearing, together with all information developed in connection with the investigation (other than items to which confidential treatment has been granted by the Secretary), shall be made available in the manner and to the extent provided in 5 U.S.C. 552; 31 CFR Part 1; Part 103, of this chapter, and subpart B of this part.

(b) *Written.* Any person may make such written submissions as he desires, within a period which will be specified in the notice, with respect to the contemplated action. Appropriate consideration will be given to any additional information or argument submitted.

§ 153.41 Referral to United States International Trade Commission.

Whenever the Secretary makes a determination of sales at less than fair value, he shall so advise the United States International Trade Commission.

"Interested person" as used in this section means any foreign manufacturer, producer, or exporter, any domestic importer of the foreign merchandise in question, and any domestic manufacturer, producer, or wholesaler of merchandise of the same class or kind as is the subject of the antidumping proceeding. All requests for hearings shall be accompanied by a statement outlining the issues which the person wishes to discuss. With respect to a "Withholding of Appraisement Notice" issued pursuant to section 153.39(a), such hearing ordinarily will be held within three weeks of the date of the request unless it is clearly impracticable to do so. In all other cases the hearing will normally be held within five weeks of the publication of the "Withholding of Appraisement Notice", or other notice of the tentative disposition of an antidumping investigation, a notice of tentative modification or revocation of a dumping finding, or a notice of any other tentative action under this part. Reasonable notice of the hearing will be given to all interested persons of record. One week prior to such a hearing, pre-hearing briefs shall be submitted to the Secretary and the Commissioner and exchanged among interested persons. Persons will be restricted, in their oral presentations, to issues raised in this pre-hearing brief. Any person not submitting such a brief ordinarily will be restricted to rebuttal of points made by other persons. Ordinarily, the presiding officer at a hearing will provide an opportunity for the submission of post-hearing briefs, within the time limits prescribed at the hearing. The Secretary may at any time invite any person or persons to supply him orally with information or argument. The hearings provided for under this section shall be exempt from the provisions of 5 U.S.C. 554, 555, 556, 557, and 702. The transcript of any hearing, together with all information developed in connection with the investigation (other than items to which confidential treatment has been granted by the Secretary), shall be made available in the manner and to the extent provided in 5 U.S.C. 552; 31 CFR Part 1; Part 103, of this chapter, and subpart B of this part.

(b) *Written.* Any person may make such written submissions as he desires, within a period which will be specified in the notice, with respect to the contemplated action. Appropriate consideration will be given to any additional information or argument submitted.

§ 153.41 Referral to United States International Trade Commission.

Whenever the Secretary makes a determination of sales at less than fair value, he shall so advise the United States International Trade Commission.

§ 153.42 Revocation of determination of sales at less than fair value; determination of sales at not less than fair value.

If the Secretary is persuaded from information submitted or arguments received that his determination of sales at less than fair value was in error, and if the United States International Trade Commission has not yet issued a determination relating to injury, he will publish a notice of "Revocation of Determination of Sales at Less Than Fair Value and Determination of Sales at Not Less Than Fair Value", or if appropriate, a notice of "Modification of Determination of Sales at Less Than Fair Value", which notice will set forth a description of the merchandise involved and state the reasons upon which it was based. The Secretary will notify the United States International Trade Commission of his action.

§ 153.43 Dumping finding.

If the United States International Trade Commission determines that there is, or is likely to be, the injury contemplated by the statute, the Secretary will make the finding contemplated by section 201(a) of the Act (19 U.S.C. 160(a)), with respect to the merchandise involved.

§ 153.44 Modification or revocation of finding.

(a) *Application to modify or revoke.* An application for the modification or revocation of any finding, based upon the absence or termination of sales at less than fair value, may be submitted in writing to the Commissioner, together with detailed information demonstrating that any sales at less than fair value have been terminated for a substantial period of time, and assurances that there will be no future sales at less than fair value. Ordinarily, such an application will not be considered unless sales at less than fair value have not existed for at least two years from the date of publication in the FEDERAL REGISTER of a dumping finding, or at least two years subsequent to the date of publication of a "Withholding of Appraisement Notice", in situations where the sample of sales examined of companies actually investigated during the antidumping investigation revealed no less than fair value margins (but the company or companies did not qualify for exclusion under section 153.38), or where the company or companies were not actually investigated during the antidumping investigation.

(b) *Modification or revocation by Secretary.* The Secretary may, on his own initiative, modify or revoke a finding of dumping which

has been in effect for at least four years if he is satisfied that there is no likelihood of resumption of sales at less than fair value of the merchandise concerned.

(c) *Notice of modification or revocation of finding.* If it appears to the Secretary from an application filed pursuant to paragraph (a) of this section, or from his own determination under paragraph (b) of this section, that a modification or revocation of an existing dumping finding may be appropriate, he will publish a "Notice of Tentative Determination to Modify or Revoke Dumping Finding", which will include all of the elements required under section 153.39. Opportunity for interested persons to present views will be provided pursuant to section 153.40.

(d) *Final determination.* As soon as possible after publication of a "Notice of Tentative Determination to Modify or Revoke Dumping Finding", the Secretary will determine whether final modification or revocation is warranted. In cases where an application for a modification or revocation is based on no sales at less than fair value for at least two years subsequent to the date of publication of the dumping finding, the Secretary may determine a final modification or revocation is warranted only if such company also provides information showing no sales at less than fair value up to date of publication of the "Notice of Tentative Determination to Modify or Revoke Dumping Finding". If he determines that a modification or revocation of a dumping finding is warranted, he will publish a "Notice of Modification or Revocation of Dumping Finding". If he determines otherwise, he will publish a notice setting forth his decision and the reasons therefor. Ordinarily, a modification or revocation of a dumping finding under this paragraph will be effective with respect to all merchandise, which is the subject of the modification or revocation, entered, or withdrawn from warehouse, for consumption on or after the date on which the "Notice of Tentative Determination to Modify or Revoke Dumping Finding" is published in the FEDERAL REGISTER. The appraisement of all merchandise which is the subject of a tentative modification or revocation and which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of the "Notice of Tentative Determination to Modify or Revoke Dumping Finding", will be ordered withheld pending the final determination on revocation.

(e) *Modification or revocation on Secretary's initiative.* In unusual circumstances, the Secretary may, on his own initiative, modify or revoke a dumping finding without publishing a "Notice of Tentative

has been in effect for at least four years if he is satisfied that there is no likelihood of resumption of sales at less than fair value of the merchandise concerned.

(c) *Notice of modification or revocation of finding.* If it appears to the Secretary from an application filed pursuant to paragraph (a) of this section, or from his own determination under paragraph (b) of this section, that a modification or revocation of an existing dumping finding may be appropriate, he will publish a "Notice of Tentative Determination to Modify or Revoke Dumping Finding", which will include all of the elements required under section 153.39. Opportunity for interested persons to present views will be provided pursuant to section 153.40.

(d) *Final determination.* As soon as possible after publication of a "Notice of Tentative Determination to Modify or Revoke Dumping Finding", the Secretary will determine whether final modification or revocation is warranted. In cases where an application for a modification or revocation is based on no sales at less than fair value for at least two years subsequent to the date of publication of the dumping finding, the Secretary may determine a final modification or revocation is warranted only if such company also provides information showing no sales at less than fair value up to date of publication of the "Notice of Tentative Determination to Modify or Revoke Dumping Finding". If he determines that a modification or revocation of a dumping finding is warranted, he will publish a "Notice of Modification or Revocation of Dumping Finding". If he determines otherwise, he will publish a notice setting forth his decision and the reasons therefor. Ordinarily, a modification or revocation of a dumping finding under this paragraph will be effective with respect to all merchandise, which is the subject of the modification or revocation, entered, or withdrawn from warehouse, for consumption on or after the date on which the "Notice of Tentative Determination to Modify or Revoke Dumping Finding" is published in the FEDERAL REGISTER. The appraisement of all merchandise which is the subject of a tentative modification or revocation and which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of the "Notice of Tentative Determination to Modify or Revoke Dumping Finding", will be ordered withheld pending the final determination on revocation.

(e) *Modification or revocation on Secretary's initiative.* In unusual circumstances, the Secretary may, on his own initiative, modify or revoke a dumping finding without publishing a "Notice of Tentative

Determination to Modify or Revoke Dumping Finding" pursuant to paragraph (c) of this section.

(f) *Modification or revocation of finding based upon injury reconsideration.* (Reserved)

§ 153.45 Publication of notices, determinations, and findings.

Each determination, whether tentative or final and whether in the affirmative or in the negative, each finding, and any modification or revocation of any of the foregoing, made under this part, will be published in the FEDERAL REGISTER. Additionally, each finding, and any modification or revocation thereof, will be published in the weekly Customs Bulletin.

§ 153.46 List of current findings.

The following findings of dumping are currently in effect:

FINDINGS OF DUMPING

Merchandise	*Country*	*T.D.*	*Modified by*
Portland cement, other than white, nonstaining portland cement.	Sweden	55369	
	Belgium	55428	
Portland gray cement	Portugal	55501	
Portland cement, other than white, nonstaining portland cement.	Dominican Republic	55883	
Steel reinforcing bars	Canada	56150	
Carbon steel bars and structural shapes	Canada	56264	
Steel jacks	Canada	66–191	
Cast iron soil pipe	Poland	67–252	
Titanium sponge	U.S.S.R.	68–212	
Pig iron	U.S.S.R.	68–261	
Pig iron	Czechoslovakia	68–262	
Pig iron	East Germany	68–263	
Pig iron	Romania	68–264	
Potassium chloride, otherwise known as muriate of potash, except that produced and sold by U.S. Borax & Chemical Co., Kalium, Saskatchewan, Canada; Kalium Chemicals, Limited, Regina, Saskatchewan, Canada; Potash Company of Canada, Limited, Lanigan, Saskatchewan, Canada; Potash Company of America, Saskatoon, Saskatchewan, Canada; International Minerals and Chemical Corporation, Libertyville, Illinois, U.S.A.; and CF Industries, Inc., Chicago, Illinois U.S.A.	Canada	69–265	74–157

Merchandise	*Country*	*T.D.*	*Modified by*
Aminoacetic acid (glycine)	France	70–71	
Steel bars, reinforcing bars, and shapes manufactured by the Broken Hill Proprietary Co., Ltd., Melbourne, Australia	Australia	70–81	
Whole dried eggs	Holland	70–198	
Tuners (of the type used in consumer electronic products), except: (I) those produced and sold by Matsushita Electric Industrial Co., Ltd., Matsushita Trading Co., Ltd., (II) those produced and sold by Victor Co. of Japan, Ltd., and (III) those produced and sold by Tokyo Shibaura Electric Co., Ltd.	Japan	70–257	76–143
Television receiving sets, monochrome and color, except sets produced and sold by Sony Corporation of Japan	Japan	71–76	75–40
Ferrite cores (of the type used in consumer electronic products)	Japan	71–84	
Ceramic wall tile, except that produced and sold by Pilkington's Tiles Sales Ltd., Manchester, England	United Kingdom	71–129	74–169
Clear plate and float glass	Japan	71–130	
Clear sheet glass	Japan	71–131	
Pig iron	West Germany	71–192	
Pig iron, except that produced and sold by Quebec Iron and Titanium Corp., Sorel, Quebec, Canada	Canada	71–193	75–107
Pig iron	Finland	71–194	
Clear sheet glass	Taiwan	71–226	
Tempered sheet glass	Japan	71–247	
Clear sheet glass weighing over 28 ounces per square foot	France	71–293	
Clear sheet glass weighing over 16 ounces per square foot	Italy	71–294	
Clear sheet glass weighing over 28 ounces per square foot.	West Germany	71–295	
Ice cream sandwich wafers	Canada	72–77	
Diamond tips for phonograph needles	United Kingdom	72–91	
Fish netting of manmade fibers	Japan	72–158	
Large power transformers	France	72–160	
Large power transformers	Italy	72–161	
Large power transformers	Japan	72–162	
Large power transformers	Switzerland	72–163	

Merchandise	*Country*	*T.D.*	*Modified by*
Large power transformers except those produced and sold by Ferranti, Ltd., Manchester, England; Hawker Siddley Electric Export, Ltd., London, England; and Parsons Peebles Power Transformers, Ltd., Edinburgh, Scotland.	United Kingdom	72-164	76-102
Asbestos cement pipe	Japan	72-178	
Elemental sulphur	Mexico	72-179	
Cadmium	Japan	72-206	
Instant potato granules	Canada	72-263	
Dry cleaning machinery	West Germany	72-311	
Bicycle speedometers	Japan	72-322	
Canned Bartlett pears	Australia	73-84	
Roller chain, other than bicycle	Japan	73-100	
Stainless steel plate, except shipments by Stora Kopparbergs Bergslags AB, Falun, Sweden	Sweden	73-157	
Synthetic methionine	Japan	73-188	
Printed vinyl film	Brazil	73-232	
Printed vinyl film	Argentina	73-233	
Stainless steel wire rods, except those produced by Creusot-Loire of Paris, France	France	73-243	
Steel wire rope, except brass electroplated steel truck tire cord of cable construction	Japan	73-296	
Polychloroprene rubber	Japan	73-333	
Elemental sulphur, except shipments produced and sold by Texasgulf, Inc., and Canadian Occidental Petroleum, Ltd.	Canada	74-1	
Expanded metal, of base metal	Japan	74-29	
Calcium pantothenate, except shipments produced and sold by Fuji Chemical Industries, Ltd.	Japan	74-34	
Racing plates (aluminum horseshoes)	Canada	74-77	
Picker sticks	Mexico	74-166	
Electric golf cars	Poland	75-288	
Birch 3 ply doorskins	Japan	76-48	

Subpart D—Action by District Director of Customs

§ 153.48 Action by the district director of Customs.

(a) *Appraisement withheld; notice to importer.* Upon receipt of advice from the Commissioner pursuant to section 153.35, district directors of Customs shall withhold appraisement as to merchandise entered, or withdrawn from warehouse, for consumption,

Merchandise	Country	T.D.	Modified by
Large power transformers except those produced and sold by Ferranti, Ltd., Manchester, England; Hawker Siddley Electric Export, Ltd., London, England; and Parsons Peebles Power Transformers, Ltd., Edinburgh, Scotland.	United Kingdom	79-104	79-102
Asbestos cement pipe	Japan	79-178	
Elemental sulphur	Mexico	79-170	
Cadmium	Japan	79-209	
Instant potato granules	Canada	79-203	
Dry cleaning machinery	West Germany	79-211	
Bicycle speedometers	Japan	79-221	
Canned Danish pears	Australia	79-84	
Roller chain, other than bicycle	Japan	79-100	
Stainless steel plate, except shipments by Stora Kopparbergs Bergslags AB, Falun, Sweden	Sweden	79-127	
Synthetic methionine	Japan	79-188	
Printed vinyl film	Brazil	79-220	
Printed vinyl film	Argentina	79-223	
Stainless steel wire rods, except those produced by Creusot-Loire of Paris, France	France	79-213	
Steel wire rope, except brass electroplated steel truck tire cord of cable construction	Japan	79-226	
Polychloroprene rubber	Japan	79-233	
Elemental sulphur, except shipments produced and sold by Texasgulf, Inc., and Canadian Occidental Petroleum, Ltd.	Canada	79-1	
Expanded metal, of base metal	Japan	79-29	
Calcium pantothenate, except shipments produced and sold by Fuji Chemical Industries, Ltd.	Japan	79-94	
Racing plates (aluminum horseshoes)	Canada	79-77	
Picker sticks	Mexico	79-104	
Electric golf cars	Poland	79-208	
Birch 3 ply doorskins	Japan	79-48	

SUBPART D—ACTION BY DISTRICT DIRECTOR OF CUSTOMS

§ 153.48 Action by the district director of Customs.

(a) *Appraisement withheld; notice to importer.* Upon receipt of advice from the Commissioner pursuant to section 153.35, district directors of Customs shall withhold appraisement as to merchandise entered, or withdrawn from warehouse, for consumption,

on or after the date of publication of the "Withholding of Appraisement Notice", unless the Secretary's "Withholding of Appraisement Notice" specifies a different effective date. Each district director of Customs shall notify the importer, consignee, or agent immediately of each lot of merchandise with respect to which appraisement is so withheld. Such notice shall indicate: (1) the rate of duty of the merchandise under the applicable item of the Tariff Schedules of the United States (19 U.S.C. 1202) if known; and (2) the estimated margin of the special dumping duty that could be assessed. Upon advice of a finding made in accordance with section 153.43, the district director of Customs shall give immediate notice thereof to the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of the appraisement of such shipment.

(b) *Request to proceed with appraisement.* If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the district director of Customs is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than the foreign market value (or, in the absence of such value, than the constructed value), the district director shall so advise the Commissioner and request his authorization to proceed with his appraisement of that shipment in the usual manner.

§ 153.49 Reimbursements of dumping duties.

(a) *General.* In calculating purchase price or exporter's sales price, as the case may be, there shall be deducted the amount of any special dumping duties which are, or will be, paid by the manufacturer, producer, seller, or exporter, or which are, or will be, refunded to the importer by the manufacturer, producer, seller, or exporter, either directly or indirectly, but a warranty of nonapplicability of dumping duties entered into before the initiation of the investigation, will not be regarded as affecting purchase price or exporter's sales price if it was granted to an importer with respect to merchandise which was:

(1) Purchased, or agreed to be purchased, before publication of a "Withholding of Appraisement Notice" with respect to such merchandise, and

(2) Exported before a determination of sales at less than fair value is made.

(b) *Statement concerning reimbursement.* Before proceeding with appraisement of any merchandise with respect to which dumping

on or after the date of publication of the "Withholding of Appraisement Notice", unless the Secretary's "Withholding of Appraisement Notice" specifies a different effective date. Each district director of Customs shall notify the importer, consignee, or agent immediately of each lot of merchandise with respect to which appraisement is so withheld. Such notice shall indicate: (1) the rate of duty of the merchandise under the applicable item of the Tariff Schedules of the United States (19 U.S.C. 1202) if known; and (2) the estimated margin of the special dumping duty that could be assessed. Upon advice of a finding made in accordance with section 153.43, the district director of Customs shall give immediate notice thereof to the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of the appraisement of such shipment.

(b) Request to proceed with appraisement. If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the district director of Customs is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than the foreign market value (or, in the absence of such value, than the constructed value), the district director shall so advise the Commissioner and request his authorization to proceed with his appraisement of that shipment in the usual manner.

§ 153.49 Reimbursements of dumping duties.

(a) *General.* In calculating purchase price or exporter's sales price, as the case may be, there shall be deducted the amount of any special dumping duties which are, or will be, paid by the manufacturer, producer, seller, or exporter, or which are, or will be, refunded to the importer by the manufacturer, producer, seller, or exporter, either directly or indirectly, but a warranty of nonapplicability of dumping duties entered into before the initiation of the investigation, will not be regarded as affecting purchase price or exporter's sales price if it was granted to an importer with respect to merchandise which was:

(1) Purchased, or agreed to be purchased, before publication of a "Withholding of Appraisement Notice" with respect to such merchandise, and

(2) Exported before a determination of sales at less than fair value is made.

(b) *Statement concerning reimbursement.* Before proceeding with appraisement of any merchandise with respect to which dumping

duties are found to be due, the district director of Customs shall require the importer to file a written statement in the following form:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter of all or any part of the special dumping duties assessed upon the following importations of _____ (commodity) from _____ (country):

(List entry numbers) which have been purchased on or after _____ (date of publication of withholding in FEDERAL REGISTER)

or purchased before _____ (same date) but exported on or after _____ (date of determination of sales at less than fair value).

A certificate will be required for all merchandise that is unappraised on the date that the finding of dumping is issued. Thereafter, a separate certificate will be required for each additional entry.

§ 153.50 Release of merchandise; bond.

When the district director of Customs in accordance with section 153.35(c) has received a notice of withheld appraisement or when he has been advised of a findng provided for in section 153.43, and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding which is then in his custody or is thereafter imported unless an appropriate bond is filed or is on file, as specified in section 153.51, or unless the merchandise covered by a specific entry will be appraised without regard to the Act.

§ 153.51 Type of bond required.

(a) *General.* If the merchandise is of a class or kind covered by a notice of withheld appraisement provided for in section 153.48(a) or by a finding provided for in section 153.43, a single consumption entry bond covering the shipment in addition to any other required bond, shall be furnished by the person making the entry or withdrawal unless:

(1) A bond is required under paragraph (b) of this section; or

(2) In cases in which there is no requirement under paragraph

(b) of this section, the district director of Customs is satisfied that the bond under which the entry was filed is sufficient. The face amount of any additional bond required under this paragraph shall be sufficient to assure payment of any special duty that may accrue by reason of the Act, but in no case shall be less than $100.

(b) *Bond on Customs Form 7591.* If the merchandise is of a class or kind covered by a finding provided for in section 153.43 and the resale price in the United States is unknown, the bond required by section 208 of the Act (19 U.S.C. 167), shall be on Customs Form 7591. In such case, a separate bond shall be required for each entry or withdrawal, and such bond shall be in addition to any other bond required by law or regulation. The record of sales required under the conditions of the bond on Customs Form 7591 shall identify the entry covering the merchandise and show the name and address of each purchaser, each selling price, and the date of each sale. The face amount of such bond shall be equal to the estimated value of the merchandise covered by the finding.

§ 153.52 Conversion of currencies.

(a) *Rule for conversion.* In determining the existence and amount of any difference between the purchase price or exporter's sales price and the fair value or foreign market value (or, in the absence of such value, the constructed value) for the purposes of sections 153.1 through 153.7 of this part, or of section 201(b) or 202(a) of the Act (19 U.S.C. 160(b), 161(a)), any necessary conversion of a foreign currency into its equivalent in United States currency shall be made in accordance with the provisions of section 522 of the Tariff Act of 1930, as amended (31 U.S.C. 372) and Part 159, subpart C of this chapter: (1) As of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison; or (2) as of the date of exportation, if the exporter's sales price is an element of the comparison.

(b) *Special rule for fair value investigation.* For purposes of fair value investigations, manufacturers, exporters, and importers concerned will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. Where prices under consideration are affected by temporary exchange rate fluctuations, no differences between the prices being compared resulting solely from such exchange rate fluctuations will be taken into account in fair value investigations.

§ 153.53 Dumping duty.

(a) *Rule for assessment.* A special dumping duty shall be assessed on all importations of merchandise, whether dutiable or free, of a class or kind as to which the Secretary has made public a finding of dumping, entered or withdrawn from warehouse, for consumption, normally on or after the effective date of withholding of appraisement, but in no case more than 120 days before the question of dumping was raised by or presented to the Secretary provided that the particular importation has not been appraised prior to the publication of such finding, and the district director of Customs has determined that the purchase price or exporter's sales price is less than the foreign market value or constructed value, as the case may be. The date on which the question of dumping was raised by or presented to the Secretary will be the date on which information in an acceptable form pursuant to section 153.27(a) was recieved for purposes of section 201(c)(1) of the Act (19 U.S.C. 160(c)(1)).

(b) *Entered value not controlling.* The fact that the importer has added, on entry, the difference between the purchase price or the exporter's sales price and the foreign market value or constructed value and the district director of Customs has approved the resulting entered value shall not prevent the assessment of the special dumping duty.

§ 153.54 Timely submission of information for dumping appraisement purposes.

Following the issuance of a finding of dumping, information necessary for the assessment of special dumping duties must be submitted as promptly as possible to the Commissioner, in such form as he may require, for entries made from the date of publication of the "Withholding of Appraisement Notice" to the date of the issuance of a finding of dumping pursuant to the Act (19 U.S.C. 160, *et seq.*). Thereafter, the necessary information shall be provided regularly on a periodic basis. If adequate information is not submitted in timely fashion, assessment may be based upon the best information available.

§ 153.55 Notice to importer.

Before the special dumping duty is assessed, the district director of Customs shall notify the importer, his consignese, or agent of the appraisement of the merchandise, as in the case of an advance in value.

§ 153.33 Dumping duty.

(a) *Rate for assessment.* A special dumping duty shall be assessed on all importations of merchandise, whether dutiable or free, of a class or kind as to which the Secretary has made public a finding of dumping, entered or withdrawn from warehouse, for consumption, normally on or after the effective date of withholding of appraisement, but in no case more than 120 days before the question of dumping was raised by or presented to the Secretary provided that the particular importation has not been appraised prior to the publication of such finding, and the district director of Customs has determined that the purchase price or exporter's sales price is less than the foreign market value or constructed value, as the case may be. The date on which the question of dumping was raised by or presented to the Secretary will be the date on which information in an acceptable form pursuant to section 153.27(a) was received for purposes of section 201(e)(1) of the Act (19 U.S.C. 160(e)(1)).

(b) *Entered value not controlling.* The fact that the importer has added, on entry, the difference between the purchase price or the exporter's sales price and the foreign market value or constructed value and the district director of Customs has approved the resulting entered value shall not prevent the assessment of the special dumping duty.

§ 153.34 Timely submission of information for dumping appraisement purposes.

Following the issuance of a finding of dumping, information necessary for the assessment of special dumping duties must be submitted as promptly as possible to the Commissioner, in such form as he may require, for entries made from the date of publication of the "Withholding of Appraisement Notice" to the date of the issuance of a finding of dumping pursuant to the Act (19 U.S.C. 160, *et seq.*). Thereafter, the necessary information shall be provided regularly on a periodic basis. If adequate information is not submitted in timely fashion, assessment may be based upon the best information available.

§ 153.35 Notice to importer.

Before the special dumping duty is assessed, the district director of Customs shall notify the importer, his consignee, or agent of the appraisement of the merchandise, as in the case of an advance in value.

§ 153.56 Dumping duty; samples.

If the necessary conditions are present, the special dumping duty shall be assessed on samples imported for the purpose of taking orders and making sales in this country.

§ 153.57 Method of computing dumping duty.

If it appears that the merchandise has been purchased by a person not the exporter within the meaning of section 207 of the Act (19 U.S.C. 166), where purchase price is less than foreign market value, the special dumping duty shall equal the difference between the purchase price and the foreign market value on the date of purchase, or agreement to purchase, or if there is no foreign market value, between the purchase price and the constructed value, any foreign currency involved being converted into United States currency as of the date of purchase or agreement to purchase. If it appears that the merchandise is imported by a person who is the exporter within the meaning of section 207 of the Act (19 U.S.C. 166), where the exporter's sales price is less than foreign market value, the special dumping duty shall equal the difference between the exporter's sales price and the foreign market value on the date of exportation, or, if there is no foreign market value, between the exporter's sales price and the constructed value, any foreign currency involved being converted into United States currency as of the date of exportation.

SUBPART E—ANTIDUMPING REVIEW PROCEDURES

§ 153.64 Antidumping protest procedures.

(a) *Protests.* Protests relating to assessment of special dumping duties under the Act, shall be made in the same manner as protests relating to ordinary Customs duties.

(b) *Review of negative determinations.* Within 30 days after publication of a "Determination of Sales at Not Less Than Fair Value", an American manufacturer, producer or wholesaler of the same class or kind of merchandise as that described in such determination may file with the Secretary a written notice of a desire to contest the determination. Upon receipt of the notice the Secretary shall publish in the FEDERAL REGISTER notice of the desire of the manufacturer, producer or wholesaler to contest the determination. Within 30 days after the publication, the manufacturer, producer or wholesaler may commence an action in the United States Customs Court contesting such determination.

§ 153.56 Dumping duty; samples.

If the necessary conditions are present, the special dumping duty shall be assessed on samples imported for the purpose of taking orders and making sales in this country.

§ 153.57 Method of computing dumping duty.

If it appears that the merchandise has been purchased by a person not the exporter within the meaning of section 207 of the Act (19 U.S.C. 160); where purchase price is less than foreign market value, the special dumping duty shall equal the difference between the purchase price and the foreign market value on the date of purchase, or agreement to purchase, or if there is no foreign market value, between the purchase price and the constructed value, any foreign currency involved being converted into United States currency as of the date of purchase or agreement to purchase. If it appears that the merchandise is imported by a person who is the exporter within the meaning of section 207 of the Act (19 U.S.C. 160), where the exporter's sales price is less than foreign market value, the special dumping duty shall equal the difference between the exporter's sales price and the foreign market value on the date of exportation, or, if there is no foreign market value, between the exporter's sales price and the constructed value, any foreign currency involved being converted into United States currency as of the date of exportation.

§ 153.58 Antidumping protest procedure.

(a) *Protests.* Protests relating to assessment of special dumping duties under the Act, shall be made in the same manner as protests relating to ordinary Customs duties.

(b) *Review by negative determinations.* Within 30 days after publication of a "Determination of Sales at Not Less Than Fair Value", an American manufacturer, producer or wholesaler of the same class or kind of merchandise as that described in such determination may file with the Secretary a written notice of a desire to contest the determination. Upon receipt of the notice the Secretary shall publish in the FEDERAL REGISTER notice of the desire of the manufacturer, producer or wholesaler to contest the determination. Within 30 days after the publication, the manufacturer, producer or wholesaler may commence an action in the United States Customs Court contesting such determination.

Redesignation Table

This table shows the relationship of sections in revised Part 153 to the sections in the present Part 153.

New section	*Old section*
153.0	153.1
153.1	153.2
153.2	153.3
153.3	153.4
153.4	New
153.5	New
153.6	153.5(a)
153.7	153.5(b)
153.8	153.6
153.9	153.7
153.10	153.8
153.11	153.9
153.12	153.10
153.13	153.11
153.14	153.12
153.15	153.18
153.16	153.13
153.17	153.16
153.18	153.17
153.21	153.23(a)
153.22	153.23(b)
153.23	153.23(c)
153.25	153.25
153.26	153.26
153.27	153.27
153.28	153.28
153.29	153.29
153.30	153.30
153.31	153.31
153.32	153.32
153.33	153.15
153.34	153.33
153.35	153.34
153.36	153.35
153.37	153.36
153.38	New
153.39	New

New section	*Old section*
153.40	153.37
153.41	153.38
153.42	153.39
153.43	153.40
153.44	153.41
153.45	153.42
153.46	153.43
153.48	153.48
153.49	153.49
153.50	153.50
153.51	153.51
153.52	153.52
153.53	153.53
153.54	New
153.55	153.54
153.56	153.55
153.57	153.56
153.64	153.64

NOTICE

No decisions will appear as T.D. 76–177 and 76–178.

(T.D. 76–179)

Cotton Textiles—Restriction on Entry

Restriction on entry of cotton textiles and cotton textile products manufactured or produced in Brazil

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., June 21, 1976.

There is published below the directive of May 24, 1976, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the levels of restraint for cotton textiles and cotton textile products in certain categories manufactured or produced in Brazil. This directive cancels

and supersedes that Committee's directive of September 15, 1975 (T.D. 75-251).

This directive was published in the FEDERAL REGISTER on May 27, 1976 (41 FR 21680), by the Committee.

(QUO-2-1)

JAMES D. COLEMAN,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Domestic
and International Business
Washington, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

May 24, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive cancels and supersedes the directive issued to you on September 15, 1975 by the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in Brazil and exported to the United States during the twelve-month period which began on October 1, 1975, in excess of the designated levels of restraint.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton Textile Agreement of April 22, 1976, between the Governments of the United States and the Federative Republic of Brazil, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on June 1, 1976, and for the twelve-month period beginning on April 1, 1976 and extending through March 31, 1977, entry into the United States for consumption of cotton textiles and cotton textile products in Categories 1-4, 9, 18/19, 22/23, 26(duck), 26/27 (other than duck), 30/31, 43, 44, 45, 46, 50, 51, 55, 56, 62, and parts of 64 in excess of the following levels of restraint:

Category	*Twelve-Month Level of Restraint* [1]
1–4	8, 695, 652 pounds
9	15, 300, 000 square yards
18/19	12, 900, 000 square yards
22/23	5, 700, 000 square yards
26 (duck)[2]	3, 200, 000 square yards
26/27 (other than duck) [3]	8, 300, 000 square yards
30/31	8, 620, 690 numbers
43	141, 968 dozen
44	40, 761 dozen
45	81, 000 dozen
46	90, 000 dozen
50	115, 000 dozen
51	84, 284 dozen
55	30, 000 dozen
56	100, 000 dozen
62	213, 043 pounds
64 (only T.S.U.S.A. 366.6500)	630, 435 pounds
64 (floor coverings) [4]	434, 783 pounds

Cotton textiles and cotton textile products, produced or manufactured in Brazil, which have been exported to the United States prior to April 1, 1976, shall not be subject to this directive.

Cotton textile products in Categories 43, 44, 45, 46, 56, 62 and part of 64 (floor coverings) which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) before the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment in the future pursuant to the provisions of the Bilateral Cotton Textile Agreement of April 22, 1976, between the Governments of the United States and the Federative Republic of Brazil which provide, in part, that: (1) within the aggregate and applicable group limits, specific

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[1] The levels of restraint have not been adjusted to reflect any entries made after March 31, 1976.

[2] The T.S.U.S.A. Nos. for duck fabric are:

320.—01 through 04,06,08	326.—01 through 04,06,08
321.—01 through 04,06,08	327.—01 through 04,06,08
322.—01 through 04,06,08	328.—01 through 04,06,08

[3] All T.S.U.S.A. Numbers in Category 26 except those listed in footnote 1.

[4] The T.S.U.S.A. Numbers for floor coverings are:

360.2000	360.7600	361.0522	361.2010	361.5622
360.2500	360.8100	361.0542	361.5000	
360.3000		361.1820	361.5422	

limits may be exceeded by designated percentages; (2) specific ceilings may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

The actions taken with respect to the Government of the Federative Republic of Brazil and with respect to imports of cotton textiles and cotton textile products from Brazil have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce

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(T.D. 76-180)

Cotton, Wool, and Manmade Fiber Textiles—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber textiles manufactured or produced in the Republic of Korea

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., June 21, 1976.

There are published below directives of May 24, 1976, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning levels of restraint for cotton, wool, and manmade fiber textiles in certain categories manufactured or produced in the Republic of Korea. These directives

further amend, but do not cancel, that Committee's directive of September 25, 1975 (T.D. 75–255).

These directives were published in the FEDERAL REGISTER on May 27, 1976 (41 FR 21679 and 21681), by the Committee.

(QUO–2–1)

JAMES D. COLEMAN,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Domestic
and International Business
Washington, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

May 24, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On September 25, 1975 the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning October 1, 1975 and extending through September 30, 1976 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to paragraphs 5 and 7 of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 26, 1975, as amended, between

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[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 26, 1975, as amended, between the Governments of the United States and the Republic of Korea which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint within Categories 1–38, part of 63 (shoe uppers), 64, 200-213, and 241-243 may be exceeded by 10 percent; within Categories 39–62, part of 63 (other than shoe uppers), and 214-240, by 7 percent; and within Categories 101–132, by 5 percent; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

the Governments of the United States and the Republic of Korea, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to amend, effective on May 27, 1976, the levels of restraint established for Categories 9/10, 22/23, 45/46/47, 48, 49, 50/51, 52, 116/117, 120, 121, 124, 219, 221, 222, part of 224, 228, 229, 235, 237 and 238 to the following:

Category	*Amended Twelve-Month Level of Restraint* [1]
9/10	6,783,443 square yards
22/23	3,916,666 square yards
45/46/47	3,633,255 square yards equivalent
48	24,819 dozen
49	51,159 dozen
50/51	213,138 dozen of which not more than 112,954 dozen shall be in Category 50 and not more than 152,889 dozen shall be in Category 51
52	78,181 dozen
116/117	489,461 pounds
120	336,470 numbers
121	201,600 numbers
124	1,050,000 numbers
219	4,393,049 dozen
221	3,018,402 dozen
222	1,133,132 dozen
224 (only T.S.U.S.A. Nos. 380.0420 and 380.8143)	46,076 dozen
228	9645,69 dozen
229	7542,17 dozen
235	1,5590,40 dozen
237	1681,44 numbers
238	2185,24 dozen

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agree-

[1] The levels of restraint have not been adjusted to reflect any entries made after September 30, 1975.

ments to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

May 24, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends, but does not cancel, the directive issued to you on September 25, 1975 by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry during the twelve-month period beginning on October 1, 1975 and extending through September 30, 1976 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea in excess of designated levels of restraint.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 26, 1975, as amended, between the Governments of the United States and the Republic of Korea, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, the directive of September 25, 1975 is amended, effective on May 27, 1976, to establish specific levels of restraint of 466,153 pounds for Category 116/117 and 1,000,000 units for Category 124 for the twelve-month period which began on October 1, 1975.

The twelve-month levels of restraint established in the directive of September 25, 1975 for Categories 104 and 208 are amended as follows, effective on May 27, 1976:

Category	*Amended Twelve-Month Level of Restraint* [1]
104	1,700,000 square yards
208	15,000,000 square yards

Wool textile products in Categories 116/117 and 124, produced or manufactured in the Republic of Korea and which have been exported to the United States before October 1, 1975, shall not be subject to this directive.

Wool textile products in Categories 116/117 and 124 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions, fall within the foreign affairs exeption to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce

[1] The levels of restraint have not been adjusted to reflect any entries made after September 30, 1975.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1172)

THE UNITED STATES v. THE CARBORUNDUM COMPANY, No. 75–26
(—F. 2d—)

1. CLASSIFICATION OF IMPORTS–FERROSILICON

The term ferrosilicon, as used in the TSUS, is limited to those iron-silicon alloys which not only meet the requirements for ferrosilicon set forth in headnote 2(e)(v), but also meet the statutory requirements for ferroalloys set out in headnote 2(e).

2. ID. – SAME CLASS OR KIND OF GOODS

In meeting the requirements of headnote 2(e), the importer must establish that the imported merchandise belongs to the class or kind of merchandise which is commonly used as raw material in the manufacture of ferrous metals.

3. ID.

To determine whether the imported iron-silicon alloy is of the same class or kind as that commonly used as a raw material in the manufacture of ferrous metals, we must look to all the pertinent circumstances, including physical characteristics, expectation of purchasers, channels of trade, environment of sale, advertising, use, economic practicality of such use and recognition in the trade.

4. ID.

According to testimony, iron-silicon alloy powders with particles smaller than 20 mesh are so fine that, as a class, they are not used as raw materials in the manufacture of ferrous metals.

5. PAR. 302(i) TARIFF ACT OF 1930

The ferrosilicon provisions of the TSUS were not intended to be the full equivalent of the ferrosilicon provisions of paragraph 302(i) of the Tariff Act of 1930.

United States Court of Customs and Patent Appeals, June 17, 1976

Appeal from United States Customs Court, C.D. 4584

[Reversed]

Rex E. Lee, Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Herbert P. Larsen* for the United States.

Barnes, Richardson & Colburn, attorneys of record, for appellee, *Joseph Schwartz*, of counsel.

[Oral argument by Herbert P. Larsen for appellant and by Joseph Schwartz for appellee]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE and MILLER, *Associate Judges*.

LANE, Judge.

This is an appeal from the judgment of the United States Customs Court, 74 Cust. Ct. 50, C.D. 4584, 393 F. Supp. 211 (1975), holding that certain iron-silicon alloy powder is classifiable as "ferrosilicon" under item 607.50, TSUS, as contended by the importer, rather than as alloy iron or steel powders, other than stainless steel powders, under item 608.08, TSUS, as originally classified. We reverse.

The Merchandise Imported

The imported merchandise is an iron-silicon alloy powder which contains 75.94 percent iron, and 16.33 percent silicon. It has been specially processed in Canada by pulverizing lump ferrosilicon to a 65 mesh particle size. The powder is imported as a special ferrosilicon for use in the heavy-media separation process.[1]

Statutes

The pertinent portions of the Tariff Schedules of the United States involved in this appeal with rates of duty in effect at the time of importation read as follows:

Schedule 6. – Metals and Metal Products

Part 2. – Metals, Their Alloys, and Their Basic Shapes and Forms

* * *

[1] In the heavy-media separation process (also known as the sink-float process) finely divided ferrosilicon is suspended in water to form a heavy medium slurry. Two raw materials that have different specific gravities are introduced into the slurry. Typical raw materials include a mixture of heavy ore and light waste rock. The heavier materials sink to the bottom of the slurry while light materials float on the surface of the slurry. In this way two materials can be separated from mixtures which contain them both.

Subpart B. – Iron or Steel

Subpart B headnotes:

* * * *

2. Grades of Iron, Steel and Ferroalloys.—For the purposes of the tariff schedules, the following terms have the meanings hereby assigned to them.

* * * *

(e) Ferroalloys: Alloys of iron (except spiegeleisen and ferronickel, as defined in headnotes 2(c) and 2(d), supra, respectively) which are not usefully malleable and are commonly used as raw material in the manufacture of ferrous metals and which contain one or more of the following elements in the quantity, by weight, respectively indicated:

over 30 percent of manganese, or over 8 percent of silicon, or over 30 percent of chromium, or over 40 percent of tungsten, or a total of over 10 percent of other alloy elements, except copper, and which, if containing silicon, do not contain over 96 percent of nonferrous alloy elements, or, if containing manganese but no silicon, do not contain over 92 percent of nonferrous alloy elements, or if containing no manganese and no silicon, do not contain over 90 percent of nonferrous alloy elements. For the purposes of this subpart-

* * * *

(v) ferrosilicon is a ferroalloy which contains, by weight, not over 30 percent of manganese and over 8 percent of silicon;

Ferroalloys:

* * * *

	Ferrosilicon:	
607.50	Containing over 8 percent but not over 60 percent by weight of silicon	0.4¢ per lb. on silicon content

* * * *

	Sponge iron; iron or steel powders:	
	Sponge iron, including powders thereof:	
	* * * *	
	Other powders:	
	Other than alloy iron or steel	
	Alloy iron or steel:	
	Stainless steel powders	
608.08	Other	15% ad val

Customs Court Opinion

The Customs Court relied on the headnote 2(e)(v) definition of ferrosilicon and the Government's concession that the imported goods possessed the requisite weight requirements of that definition, in finding that the imported merchandise was dutiable as ferrosilicon under item 607.50, TSUS. The court did not view the provision for ferrosilicon as limited by the definition of the term ferroalloys, viz., "alloys of iron * * * commonly used as raw material in the manufacture of ferrous metals," given in headnote 2(e), even though the provision for ferrosilicon was indented under the term ferroalloy in the TSUS. However, the court also found that even if the definition of ferroalloy was determinative of classification, then the evidence of record showed that the imported merchandise was, eo nomine, ferrosilicon, which was a class of kind of iron alloy commonly used as raw material in the manufacture of ferrous metals.

Opinion

As noted above, the dispute in this case centers about the applicability of the provision claimed by the importer, namely, item 607.50, TSUS, to the imported merchandise. The Government argues that in order for the imported merchandise to fall within the purview of item 607.50, TSUS the merchandise must not only meet the criteria for ferrosilicon, as defined in headnote 2(e)(v), but it also must meet the criteria for ferroalloys, as defined in headnote 2(e). The Government contends that the imported merchandise is not a ferroalloy because it is not an alloy of iron which is "commonly used as raw material in the manufacture of ferrous metals."

We believe that Congress, by indenting provisions for ferrosilicon, such as item 607.50 in question, under the term "Ferroalloys:" in Schedule 6, Part 2, Subpart B, intended that [1] the term ferrosilicon, as used in the TSUS, be limited to those iron-silicon alloys which not only meet the statutory requirements for ferrosilicon set forth in headnote 2(e)(v), but also meet the statutory requirements for

ferroalloys set out in headnote 2(e). That is, the term ferrosilicon should be construed as a further limitation on the term ferroalloys, incorporating therein all the requirements for the definition of ferroalloys. In harmony with this view is General Interpretative Rule 10(c)(i) which reads:

> (c) an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; but, in applying this rule of interpretation, the following considerations shall govern:
>
> (i) a superior heading cannot be enlarged by inferior headings indented under it but can be limited thereby;

which is to say that the imported merchandise must meet all the requirements for the superior heading, here "ferroalloy," in order to be classified under the inferior heading, here "ferrosilicon."

We find further support for this view in the *Tariff Classification Study* (1960), Schedule 6, Part 2, at 91, in its comment on ferronickel. In particular we note the following language:

> Moreover, it is not entirely clear that it [ferronickel] would always conform to the proposed definition of ferroalloy in that some of it may be usefully malleable.

In part because of this concern that ferronickel would not always fit the proposed definition for ferroalloy, a separate provision was established for ferronickel; that is, it was not indented under the term ferroalloy. We believe that implicit in this action is a recognition that all alloys which remain enumerated under ferroalloys in the TSUS must fit the three-part definition of ferroalloys given in headnote 2(e).

Since we have found that the imported merchandise must be "commonly used as raw material in the manufacture of ferrous metals" in order for classification under item 607.50 to be proper, we now turn to a consideration of the question of whether the imported merchandise fit this criterion.

As part of its dual burden of proving that the assigned classification is incorrect and proving the proposed classification correct,[2] the importer has the burden of proving that the imported merchandise is commonly used as raw material in the manufacture of ferrous metals.

General Interpretative Rule 10(e)(i) defines how use requirements (other than actual use) are to be construed:

> (e) in the absence of special language or context which otherwise requires—

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[2] *Maher-App & Co. v. United States*, 57 CCPA 31, C.A.D. 973, 418 F.2d 922 (1969); *United States v. New York Merchandise Co.*, 58 CCPA 53, C.A.D. 1004, 435 F.2d 1315 (1970).

(i) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined;

[2] Therefore, on the record before us, the importer must establish that the imported merchandise belongs to a class or kind of merchandise which is commonly used as raw material in the manufacture of ferrous metals.

The evidence before us shows convincingly that lump ferrosilicon (particle size ¼″ to 2″), or powder ferrosilicon having particles of mesh size 20 or larger, is commonly used as raw material in the manufacture of ferrous metals. We must therefore consider whether the imported powdered ferrosilicon of mesh size 65 belongs to this same class or kind of ferrosilicon.

[3] To determine whether the imported iron-silicon alloy is of the same class or kind as that commonly used as raw material in the manufacture of ferrous metals, we must look to all the pertinent circumstances. *Star-Kist Foods, Inc.* v. *United States*, 45 CCPA 16, C.A.D. 666, 275 F. 2d 472 (1957). Factors which have been considered by courts to be pertinent in determining whether imported merchandise falls within a particular class or kind include the general physical characteristics of the merchandise, the expectation of the ultimate purchasers, the channnels, class or kind of trade in which the merchandise moves, *Maher-App & Co.*, supra at 37, 418 F. 2d at 926 (Baldwin, J., concurring), the environment of the sale (i.e., accompanying accessories and the manner in which the merchandise is advertised and displayed, *United States* v. *Baltimore & Ohio R.R.*, 47 CCPA 1, C.A.D. 719 (1959)), the use, if any, in the same manner as merchandise which defines the class, the economic practicality of so using the import, and the recognition in the trade of this use. *Bob Stone Cordage Co.* v. *United States*, 51 CCPA 60, C.A.D. 838 (1964). Susceptibility, capability, adequacy, or adaptability of the import to the common use of the class is not controlling. *Baltimore & Ohio R.R.*, supra; *Maher-App & Co.*, supra at 37, 418 F. 2d at 926 (Baldwin, J., concurring).

Many of the pertinent factors relied upon in prior cases are present here, and all show that the import is not of a class or kind commonly used as a raw material in the manufacture of ferrous metals. The record shows that the imported ferrosilicon is only used for heavy-media separation, which has been characterized as a mining operation, not manufacturing. Therefore the ultimate purchasers of the

import would not be the same as the purchasers of the class of material used in the manufacture of ferrous metals. Each would have different expectations for the product and different purposes for making the purchase, and would be in different channels of trade. Furthermore, it is not commercially practical to use the import in the manufacture of ferrous metals. The record indicates that such phenomena as the turbulence in blast furnaces and the density needed to penetrate the slag or go into the metal render 65 mesh powder too fine to be used in the manufacture of ferrous metals.

Moreover, the imported goods have been specially processed to provide the import with a utility *different* from the class. The importer's witness testified that lump iron-silicon alloy of the general size used in manufacturing ferrous metals is further processed, at some expense, in an aero-fall mill and a cyclone separator to achieve a high density alloy which is fine enough for heavy-media separation use. Then the powder is fed through a magnetic separator, which removes low iron content (high silicon content) particles. This processing destroys the alloy's usefulness for ferrous metals manufacture while creating the properties necessary for heavy-media separation.

Finally, we note that the record indicates that between about 20 mesh and 65 mesh there is a natural dividing line separating two classes of iron-silicon alloys. [4] According to the unrebutted testimony of a government witness, iron-silicon alloy powders with particles smaller than 20 mesh are so fine that, as a class, they are not used as raw materials in the manufacture of ferrous metals. On the other hand, iron-silicon alloys in which particle size is between 20 mesh and 2 inches have a chief use as a raw material in the manufacture of ferrous metals. Thus the record reflects two distinct, nonoverlapping uses—below 65 mesh the only shown use is in heavy-media separation, above 20 mesh the only shown use is as a raw material in the manufacture of ferrous metals.

For the above reasons, we conclude that the importer has not met its burden of proving that the imported powder is a member of the class of iron-silicon alloy which is commonly used in the manufacture of ferrous metals.

Alternatively, the importer asserts that the heavy-media separation process is a preprocessing step in the manufacture of ferrous metals and, therefore, that the imported goods are per se used in the manufacture of ferrous metals. We cannot agree that the use of iron-silicon alloy powder in the heavy media separation process is a use as a raw material in the manufacture of ferrous metals. First, the alloy powder is used over and over; it is not intended to be a raw material which

forms a component of the ferrous metal. Second, the process is not a manufacturing step as far as the ultimate production of a ferrous metal is concerned. The process merely segregates pieces of one density from those of other densities. It in no way transforms or operates on the iron ore by modifying its composition or physical form to advance its ultimate manufacture into ferrous metal. Third, the heavy-media separation process is not limited to iron ore separation. Thus, the ultimate goal is not necessarily a production of a ferrous metal.

The importer further contends that Congress did not intend that the TSUS change the classification for ferrosilicon as it existed under the Tariff Act of 1930, in which fine powdered ferrosilicon was treated the same as lump ferrosilicon, both being classified under paragraph 302(i). In support of this argument the importer refers to the *Tariff Classification Study*, supra at 92, which states that with respect to the provisions for the ferro-alloys named in items 607.30 to 607.75 no rate change was made. We cannot view this statement in the study as a positive indication that no change was made in the treatment of ferrosilicon in the TSUS from the Tariff Act of 1930, In the first place the same study, page 87, points out that "there is something amiss" in the treatment of ferrosilicon under paragraph 302(i). This dissatisfaction indicates a Congressional intent to modify the provisions for ferrosilicon which existed in the 1930 Act. Moreover, the 1930 Act did not relate provisions for ferrosilicon to the term ferro-alloy as does the TSUS. [5] We therefore fail to find support for the importer's view that the ferrosilicon provisions of the TSUS were intended to be the full equivalent of the ferrosilicon provisions of paragraph 302(i) of the Tariff Act of 1930.

For the above reasons, the importer has not sustained its burden of proving that its proffered classification is correct. The judgment of the Customs Court is, accordingly, *reversed.*

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4654)

ARTMARK CHICAGO, LTD. *v.* UNITED STATES

Plastic horse figures

Plastic horse figures claimed to be figurines of plastics under the provision of item 773.10, Tariff Schedules of the United States, *held* properly classified as toy figures of animate objects as provided for in item 737.40, Tariff Schedules of the United States.

Classification by customs carries with it the presumption of correctness, 28 U.S.C. 2635 (1970), imposing a dual burden upon plaintiff.

The manner of sale is not necessarily determinative of classification. *S. Y. Rhee Importers* v. *United States*, 61 CCPA 2, C.A.D. 1108, 486 F. 2d 1385 (1973).

Chief use is a question of fact which must be established on the basis of positive testimony representing such use throughout the United States. *L. Tobert Co., Inc., American Shipping Co.* v. *United States*, 41 CCPA 161, C.A.D. 544 (1953). Such use must relate to the particular class or kind of article involved at or immediately prior to the time of importation.

Court No. 73-3-00816

Port of Chicago

[Judgment for defendant.]

(Decided June 7, 1976)

Schwartz & Lidstrom (*Thomas J. O'Donnell* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Saul Davis* and *Glenn E. Harris*, trial attorneys), for the defendant.

FORD, Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of plastic horse figures approximately 10 inches high, composed in chief value of plastic, having removable plastic saddles and metal reins. The merchandise was classified as toy figures of animate objects under provision of item 737.40, Tariff Schedules of the United States, as modified by T.D. 68-9, and assessed with duty at the rate of 21 or 17.5 per centum ad valorem depending upon the date of entry.

Plaintiff contends the horses are not toy figures but are in fact used for ornamental decoration and display. Accordingly, it is contended they are properly subject to duty at the rate of 10 or 8.5 per centum ad valorem as figurines of plastics as provided for in item 773.10, Tariff Schedules of the United States, as modified by T.D. 68-9.

The pertinent statutory provisions are:

Item 737.40

Toy figures of animate objects (except dolls):		
Not having a spring mechanism:		
* * * * * * *		
Not stuffed:		
* * * * * * *		
Other		17.5% or 21% ad val.

Item 773.10

Plaques and figurines, of rubber or plastics	8.5% ad val.	or 10%

Headnote 2, Subpart E, Part 5, Schedule 7, Tariff Schedules of the United States

2. For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults.

General Interpretative Rule 10(e)(i)

(e) in the absence of special language or context which otherwise requires—

(i) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined;

The record consists of the testimony of four witnesses called on behalf of plaintiff and the receipt in evidence of twelve exhibits. Defendant introduced the testimony of nine witnesses and offered five exhibits in evidence.

Mr. Joseph Yashon, vice president and controller of Artmark Chicago, Ltd., testified he is familiar with all matters dealing with customs and identified the horse involved which was received in evidence as plaintiff's exhibit 1.

Plaintiff next called Mr. Alfred Ellis, vice president in charge of sales of Thunderbird Products Co. of Chicago. His duties include promotional work and attending shows as well as covering five states doing promotional sales work. Mr. Ellis was familiar with exhibit 1 as his firm purchases said item from Artmark. He has sold exhibit 1 in resort areas and western shops for 6 to 8 years. Based upon his experience in sales, exhibit 1 is sold in the giftware sections of souvenir shops, along with statues and ornamented items, or as collectors' items in western shops.

The witness identified a catalog of his company for 1974–1975 which was received in evidence as plaintiff's exhibit 2. On *voir dire*, Mr. Ellis stated that in the 1971–1972 catalog exhibit 1 was depicted in the giftware section. The catalog was divided in the same sections as in exhibit 2. He further indicated that approximately 4,500 catalogs are distributed throughout the United States each year. Mr. Ellis identified exhibits 3, 4, and 5 which he purchases from plaintiff and sells to the same buyers, i.e., giftware sections of stores. In his opinion they are used for collecting or ornamental purposes. The

opinion of the witness on use is based upon the purchasers to whom he sells the item.

Mr. Ellis identified exhibits 6 and 7 having purchased them from Breyer Molding Co. He sells them to the same buyers as exhibits 1, 3, 4, and 5. They are sold by him to gift shops, the souvenir trade and western stores. The witness has seen such articles in windows, on televisions, on mantels, as well as an ornament on the back window or hood of a car. In his opinion the horses are collectible items used for display or ornamentation. The witness identified a brochure entitled "Breyer's Animal Creations" which was received in evidence as plaintiff's exhibit 8. Mr. Ellis identified on pages 2 and 3, items 57 and 112 which he testified represented exhibits 6 and 7. Exhibit 1, being an import, is less expensive and would retail for approximately $5 while exhibit 6 would retail between $7 and $8 while exhibit 7 would retail between $6 and $7. The saddle on exhibit 1 is a western style saddle which makes it more pleasing to those who want a western horse as part of their collection.

Mr. Ellis identified exhibit 9, a plastic donkey which he has sold for approximately 10 years. This item was sold by him to the same type of stores, i.e., gift shops and western stores. The same evidence was adduced as to plaintiff's exhibit 10, a cow, and plaintiff's exhibit 11, a dog. The witness sold the reindeer, plaintiff's exhibit 12, for approximately 15 years and was of the opinion it is used for decorative, ornamental or collectible purposes.

On cross-examination, Mr. Ellis testified he sold exhibit 1 to gift shops in resort areas and that these shops also sell toys. Mr. Ellis' only information as to use is based upon information received from his customers. The witness did not know of his own personal knowledge the particular individuals who purchased the horse from the gift shop, nor did he know how these purchasers used the horse. Mr. Ellis did however see articles such as involved used to make lamps, and on the back window of automobiles.

Mr. Arthur Lozins, a salesman for plaintiff corporation since 1955, was then called on behalf of plaintiff. Mr. Lozins testified that he sells to two classes of customers, wholesalers (jobbers) and retailers. The wholesalers include florist jobbers, souvenir jobbers and carnival jobbers. The retailers include mail-order houses, large retail florists, discount stores and chain stores which are for the most part in the eastern two-thirds of the United States which area he personally covers.

In the opinion of witness Lozins, plaintiff's exhibit 1 is primarily used as a decorative item by horse collectors and fanciers. He is a

horse owner and observed plaintiff's exhibit 1 for sale at a retail stand at a horse show for sale to horse fanciers.

On cross-examination, Mr. Lozins stated that retail stores which sell plaintiff's exhibit 1 also sell toys but that in his opinion less than 5 percent of the horses are displayed or sold with toys. He personally did not call on toy jobbers because in his experience he found they did not buy articles such as plaintiff's exhibit 1 in sufficient quantities to justify the time spent in selling such purchasers. Mr. Lozins testified that he does not of his own personal knowledge know how the ultimate purchaser uses articles such as plaintiff's exhibit 1.

Mr. Henry Berg was then called to testify on behalf of plaintiff. Mr. Berg is the owner of Berg Sales Co. which is a general wholesale merchandiser. He is also president of, and virtual owner of, Federal Supply Corp. which is a retail discount store. Both are located in downtown Chicago and he has been with them since 1937. Mr. Berg carries and sells plaintiff's exhibit 1 and for 20 years has sold horses of this type. Based upon his experience, Mr. Berg is of the opinion that such horses are used only for decorative purposes. The largest users, according to Mr. Berg, are teenage girls who use them to decorate their bedrooms. Plaintiff's exhibit 1 is offered for sale by him in his store along with other decorative items.

On cross-examination, Mr. Berg stated he sells toys in his wholesale company, but the store is divided into sections and plaintiff's exhibit 1 is displayed in a totally different section than the toys. While he has not personally observed the use of plaintiff's exhibit 1, the customers often volunteer their resaons for purchasing such merchandise.

The defendant called as its first witness Mr. Richard Mazursky, an employee of Montgomery Ward & Co. for 8 years. During the time period in question the witness was a toy buyer for his company. Mr. Mazursky is familiar with the manner in which Montgomery Ward advertises and sells its merchandise throughout the United States, except Hawaii. Toys are usually displayed in the toy section of the catalog and in the toy department of its retail outlets. The witness was familiar with defendant's exhibit A (Johnny West "Satan" Horse and Saddle) and exhibit B (Johnny West Rider "Captain Maddox" Doll) having purchased them for Montgomery Ward. Defendant's exhibit A was sold through catalog and was advertised in the toy section. Defendant's exhibit B was sold in the retail stores and sold in the toy section. Both articles in his opinion are toys.

The witness was also familiar with the Breyer horses, plaintiff's exhibits 6 and 7, having purchased similar horses for Montgomery Ward. Exhibits 6 and 7 were sold in the toy section of Montgomery Ward stores. In his opinion exhibits 6 and 7 are toys.

On cross-examination, Mr. Mazursky testified that all items sold in the toy section are not necessarily toys. Exhibits A and B were sold as sets and not separately. The sets included a horse, saddle and rider. Plaintiff's exhibit 1, according to the witness, had much better detail and had a more aesthetic quality than defendant's exhibits A and B. He also was of the opinion that exhibits A and B had a greater degree of play value than exhibit 1. Mr. Mazursky then stated he had seen horses such as exhibit 1 in his company's offices, in the retail stores and in a home. The horse he observed in the home was displayed as a collector's item on a bookshelf. Items such as exhibit 1 were exhibited for sale by Montgomery Ward as collectors' items, and when sold in the toy department, they are enclosed in a glass case. The witness had never seen an article such as exhibit 1 used as a toy.

On redirect examination, Mr. Mazursky stated he had seen stuffed animals and dolls on a shelf and he considered them toys. When read the definition of toy contained in the Tariff Schedules of the United States, he stated plaintiff's exhibit 1 was a toy.

On recross examination, the witness stated the predominant or chief market for articles such as exhibit 1 is for girls in the 9- to 14-year-old age group as display items. A market for adults also exists.

Defendant next called Mr. John Striet, a toy buyer for Sears Roebuck & Co. Mr. Striet testified that Sears Roebuck & Co. sold defendant's exhibits A and B and in his opinion they are toys. They are advertised in the toy section of his company's catalog and sold in the toy department of its retail stores. Sears Roebuck catalog sales and stores are located in all 50 states.

On cross-examination, Mr. Striet stated that not everything sold in the toy department are toys. He was of the opinion that plaintiff's exhibit 1 is different than exhibit A in size, accessories, play value and fragility. He has never seen exhibit 1 in use, but it was his opinion that it is chiefly used for display and ornamentation. Exhibit 1 has greater aesthetic appeal. Exhibit A in the opinion of Mr. Striet is used by boys in the 4- to 12-year-old age group.

Dr. Rolf Peterson was called on behalf of defendant. Dr. Peterson holds a doctorate in psychology and specializes in clinical psychology and developmental psychology. He is an associate professor at the University of Illinois. Dr. Peterson has authored a number of articles relating to children and has coauthored a book utilized at the University of Illinois. He has observed children at play in school settings, in preschool and day care centers as well as in his home and the homes of neighbors.

Dr. Peterson had observed children playing with horses such as plaintiff's exhibit 1 and defendant's exhibit A. The child would pretend to feed it and pull the horse around the room, sometimes placing it under the bed to fantasize a barn setting. The child would play with the horse with or without a doll. The child would remove the saddle and manipulate the reins. The only aesthetic value a child finds in a replica of a horse is that it looks like a horse. The fact that exhibit 1 has less paraphernalia than defendant's exhibit A enhances the play value of exhibit 1 for children in the 3- to 5-year-old age group. While the witness has seen horses on a shelf in a child's room, they were in his opinion in a state of nonuse but are primarily a play object. According to Dr. Peterson, collecting is a form of play activity for a child. Collecting articles as a hobby by adults is in his opinion considered to be a form of amusement.

Dr. Peterson defined a hobby as collecting objects plus having knowledge about the objects the person collects such as the breed of the horse, etc. If an adult collected one or more plastic horses, this use in his opinion would be as a decorative item or figurine. Such a collection as a hobby would be for amusement plus learning.

Mr. Peter Stone, vice president and marketing director of Breyer Molding Co. was then called on behalf of defendant. Mr. Stone's responsibility is for the sales and development of the product line of Breyer Molding Co. He attends two trade shows every year, the Hobby Industry Association Show and the American Toy Fair. Toy and hobby items are displayed at both shows. Mr. Stone is familiar with plaintiff's exhibits 6 and 7 as both are manufactured by his company. These two items, according to Mr. Stone, are shown at both the hobby show and the toy fair. Sales of the Breyer horses are directed toward the young-girl age group. Mr. Stone was of the opinion that the Breyer horses such as exhibits 6 and 7 were sold in the manner depicted by defendant's exhibit E as collectors' items and used for play.

Mr. Stone believed a hobby item is an item which involves a youngster being creative and occupying his time with an article for his amusement, pleasure or fun. The witness has observed exhibits 6 and 7 used by children in setting up dioramas, farm scenes or racetrack scenes. This use could be analogized to the use of Barbi Dolls with their various accessories. The majority of such articles are used for play or amusement.

On cross-examination, Mr. Stone was of the opinion that collecting of horses does not militate against the article being primarily used by children for amusement purposes. The witness has seen horses on a shelf but he considered them in nonuse and the primary purpose was as a toy.

Defendant additionally produced the testimony of five children ranging from 8 years of age to 12 years of age. Their testimony related to the use of exhibit 1 or similar items by them for amusement and play.

Based upon the record as made, plaintiff contends it has established the involved merchandise to be properly subject to classification under item 773.10, Tariff Schedules of the United States, as figurines of plastics. In order to establish this claim, plaintiff must overcome the presumption of correctness attaching to the classification by the district director of customs. This presumption which is now statutory, 28 U.S.C. 2635 (1970), imposes upon plaintiff a dual burden which in this instance requires proof establishing that the involved horses are not chiefly used for the amusement of children or adults,* and further establishing the involved horses to be figurines.

Plaintiff's task in overcoming the first burden imposed upon it is to establish the involved horses are not chiefly used for the amusement of children or adults. General Interpretative Rule 10(e)(i) defines chief use as being the use which exceeds all other uses. Chief use is a question of fact which must be established on the basis of positive testimony representing such use throughout the United States. *L. Tobert Co., Inc., American Shipping Co.* v. *United States*, 41 CCPA 161, C.A.D. 544 (1953). Such evidence must relate to use of the particular class or kind of article involved at or immediately prior to the time of importation.

The evidence adduced by plaintiff falls short of negating the chief use attaching by virtue of the presumption of correctness. The witnesses called for the most part had not observed use and testified generally as to the type of store or department to which they sold the horse in question.

The court is of course aware of the general principle that an importer who testifies as to the purpose of manufacture and the market in which it is sold may establish a *prima facie* case. *The A. W. Fenton Co., Inc.* v. *United States*, 67 Cust. Ct. 519, R.D. 11755 (1971), *aff'd*, 70 Cust. Ct. 286, A.R.D. 313 (1973); *Davis Products, Inc., Frank M. Chichester* v. *United States*, 59 Cust. Ct. 226, C.D. 3127 (1967). In these cases defendant offered evidence of actual use which refuted the evidence presented by plaintiff's witnesses who were sellers.

In the case of *S. Y. Rhee Importers* v. *United States*, 61 CCPA 2 C.A.D. 1108, 486 F. 2d 1385 (1973), the appellate court in reviewing the manner of sale as it relates to chief use made the following observation:

*Headnote 2, Subpart E, Part 5, Schedule 7, TSUS.

This leads to appellant's primary argument that the lower court found chief use as a greeting card. Great emphasis is placed on a statement by the Customs Court that "[t]he evidence preponderantly establishes that the imported inflatable articles are sold and purchased *in the same manner* that ordinary greeting cards are sold and purchased." [Emphasis quoted.] Appellant then argues that the Customs Court was, therefore, inconsistent in finding chief use as a greeting card and then classifying the imported items as toys. Such an inconsistency would, of course, be erroneous. However, as quoted above, the Customs Court clearly stated that the chief purpose of amusement "is not refuted by the evidence adduced at trial." Moreover, it said:

> It is relatively of little probative value that the articles are sold at counters that feature "greeting cards" consisting essentially of printed matter, and not by retail stores that sell toys exclusively. There are few stores that any longer have a corner on the toy market.

This court has had occasion to point out that the manner in which an article is bought and sold is not necessarily determinative of its classification. *United States* v. *Ignaz Strauss and Company, Inc.*, 37 CCPA 32, C.A.D. 415 (1949); *United States* v. *Ignaz Strauss and Company, Inc.*, 37 CCPA 48, C.A.D. 418 (1949). *Novelty Import Company, Inc.* v. *United States*, 53 Cust. Ct. 274, Abstract No. 68780 (1964) is also in point. There certain imitation poodle dogs were classified as manufacturers of rayon and other synthetic textiles. The importer protested that they were properly classifiable as toys not specially provided for and presented testimony concerning their display in toy sections of stores and their sale to toy jobbers. In overruling the protest, the Customs Court declared:

> The mere fact that three of the witnesses sold the imported items to toy jobbers and the other witnesses observed them displayed in the toy section of large stores, does not *ipso facto* make the involved merchandise toys since the merchandising medium through which articles may be sold is not always a proper criterion through which to judge the classification of an article. *United States* v. *Ignaz Strauss and Company, Inc.*, 37 CCPA 32, C.A.D. 415.

By the same token, testimony relating to the sale to giftware departments and western stores does not refute the presumption that the imported horse is chiefly used for the purpose of amusement of children or adults nor does it *ipso facto* establish the involved horse to be a figurine.

The record having failed to overcome the presumption of correctness attaching to the classification, the court must overrule the claim and sustain the classification.

Judgment will be entered accordingly.

(C.D. 4655)

BRENTWOOD ORIGINALS *v* UNITED STATES

Cross-motions for summary judgment

Court No. 72-2-00359

Port of Los Angeles

[Plaintiff's motion granted.]

(Decided June 7, 1976)

Glad, Tuttle & White (*Robert Glenn White* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Jerry P. Wiskin*, trial attorney), for the defendant.

MEMORANDUM OPINION AND ORDER

WATSON, Judge: The merchandise at issue here is the same as was the subject of *Brentwood Originals* v. *United States*, 73 Cust. Ct. 185, C.D. 4572 (1974)[1] in which it was held that the covers of a wedge-shaped cushion and a pillow with two stubby arms chiefly used to support individuals on a bed were a variety of bedding known as bolster cases within the meaning of item 363.30 of the Tariff Schedules of the United States, as modified.[2]

In these cross-motions for summary judgment plaintiff relies on the principle of *stare decisis* while defendant claims to have clearly and convincingly demonstrated the existence of error in the opinion on which plaintiff relies.[3] I cannot agree with defendant's position and I therefore consider this case appropriate for the application of the rule of *stare decisis*.

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[1] The record of that case has been incorporated herein.

[2]

	Other bedding not ornamented:	
	Of vegetable fibers:	
	Sheets and pillowcases (including bolster cases):	
363.30	Of cotton	10.5% ad val.

[3] Defendant maintains the correctness of the classification as "other furnishings" under item 366.63, as modified, and makes an alternative claim for classification as "other bedding" under item 363.60, as modified.

Defendant relies on the affidavits of three men involved in the manufacture of bed furnishings. The affidavits are weak, inconsistent in part with defendant's argument, somewhat self-contradictory and altogether inadequate to demonstrate the existence of error in the prior opinion or the correctness of a contrary result.

Bedding is the general statutory term which precedes and includes the term "bolster cases." The affiants' view that the articles in dispute are not bedding is not relevant because the term "bedding" is already defined in headnote 1(a) to subpart B of part 5 of schedule 3 as meaning, *inter alia* ". . . articles, by whatever name known, chiefly used as bed furnishings . . . ."

The controlling consideration is that these articles be chiefly used as bed furnishings. This proposition was held to have been proved in the prior case and defendant's evidence here has not cast doubt on the correctness of that result. In fact, two of the three affiants (Herbert and Jack Monas) are of the opinion that the stubby-armed bed rest is most accurately described as a bed furnishing for other than sleep purposes—an opinion which is entirely consistent with the result reached in the first case.

How these same affiants can then go on to state that the cover of the bed rest they have just described as a bed furnishing is not chiefly used on beds escapes my understanding. Further statements that the articles in question are "susceptible" of uses other than on a bed are deserving of no weight in the determination of actual chief use.

Defendant's additional evidence and arguments relate to the meaning of the term "bolster cases." They are continuations and elaborations of the position that bolster cases are simply one special type of pillowcase coupled with the contention that the articles in question are more in the nature of slipcovers for upholstered articles. I adhere to the view that the term "bolster cases," when read in the light of the comprehensive headnote definition of bedding, was not added to the tariff language for the redundant naming of one rather obscure variety of pillowcase but to describe the covers of articles chiefly used to support individuals on a bed.

For the reasons expressed above, it is

ORDERED, that plaintiff's motion for summary judgment be, and the same hereby is, granted, and it is further

DECIDED AND ADJUDGED, that the merchandise involved herein, described on the invoices in entry 121418 as bolster cases, bolster covers, bed rests or bed rests style No. 500, is properly classifiable under item 363.30 of the TSUS, as modified by T.D. 68–9, and is dutiable at the rate of 10.5% ad valorem; and it is further

ORDERED, that the district director of customs at the port of Los Angeles shall reliquidate the entry accordingly.

Protest 2704–1–003299 relating to entry 118476, having been abandoned, is dismissed.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *June 14, 1978.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/155	Ford, J. June 8, 1976	Morris Friedman & Co.	68/58692, etc.	Item 653.37 17%, 15% or 13%	Item 653.35 9%, 8% or 7%	U.S. v. Morris Friedman & Co. (C.A.D. 1156)	Philadelphia Table, floor or portable indoor lamps, of brass
P76/156	Ford, J. June 8, 1976	Hallmark Cards, Inc.	69/19097, etc.	Item 653.37 15% or 13%	Item 653.35 8% or 7%	U.S. v. Morris Friedman & Co. (C.A.D. 1156; C.A.D. 1157)	Kansas City Candleholders, candlesticks, sconces, etc.
P76/157	Ford, J. June 8, 1976	Langfelder, Homma & Carrol, Inc., et al.	75-8-02112, etc.	Item 653.37 13%, 11% or 9.5%	Item 653.35 7%, 6% or 5%	Morris Friedman & Co. v. U.S. (C.D. 4570, aff'd C.A.D. 1157)	New York Candleholders, candlesticks, etc.

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decision

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/70	Watson, J. June 8, 1976	The Florsheim Shoe Co., Division of Interco.	74-3-00772	Foreign value	Appraised unit values less 1% cash discount, packed	Agreed statement of facts	Chicago Calf upper leather, kid upper leather, kid lining leather

Judgment of the United States Customs Court in Appealed Case

JUNE 7, 1976

APPEAL 75-27.—Esco Manufacturing Co., aka J. Hofert Co. *v.* United States.—CHRISTMAS BULBS—CHRISTMAS-TREE LAMPS—OTHER ELECTRIC FILAMENT LAMPS—TSUS.—C.D. 4585 affirmed February 26, 1976. C.A.D. 1167.

International Trade Commission Notices

Investigations by the United States International Trade Commission

DEPARTMENT OF THE TREASURY, *June 24, 1976.*

The appended notices relating to investigations by the United States International Trade Commission are published for the information of Customs Officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[AA1921-156, 157, and 158]

ALPINE SKI BINDINGS FROM AUSTRIA, SWITZERLAND, AND WEST GERMANY

Notice of Investigations and Hearing

Having received advice from the Department of the Treasury on May 28, 1976, that alpine ski bindings and parts thereof from Austria, Switzerland, and West Germany, are being, or are likely to be, sold at less than fair value, the United States International Trade Commission on June 8, 1976, instituted investigations Nos. AA1921-156, 157, and 158, respectively, under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigations will be held in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street N.W., Washington, D.C. 20436, beginning at 10 a.m., e.d.t., on Tuesday, July 13, 1976. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing

should be received by the Secretary of the Commission, in writing, at the Commission's office in Washington, D.C., not later than noon on Friday, July 9, 1976.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued June 11, 1976.

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